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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 477

ATLANTIC COAST LINE R. Co.,

Petitioner,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 11, 1969
CERTIORARI GRANTED NOVEMBER 10, 1969

Supreme Court of the United States

OCTOBER TERM, 1969

No. 477

ATLANTIC COAST LINE RAILROAD COMPANY,

Petitioner,

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; J. E. EASON, individually and as an official of
said Brotherhood; J. D. SIMS, individually and as an
official of said Brotherhood; H. M. SAWYER, individually
and as a member of said Brotherhood; W. K. MORRIS,
individually and as a member of said Brotherhood; and
G. W. RUTLAND, individually and as a member of said
Brotherhood,

Respondents.

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Docket Entries

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA—JACKSONVILLE DIVISION
No. 67-335—Civ.—J.

ATLANTIC COAST LINE R. Co.,

Plaintiff,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.

DATE

PROCEEDINGS

1967

April 25 Complaint filed.

" 25 Summons issued as to Brotherhood c/o J. E. Eason (Orig. & 1 to Marshal).

" 25 Summons issued as to Brotherhood c/o J. D. Sims (Orig. & 1 to Marshal).

" 25 Summons issued as to Local Lodge Div. 823 c/o J. E. Eason (Orig. & 1 copy to Marshal).

" 25 Summons issued as to Local Lodge Div. 823 c/o J. D. Sims (Orig. & 1 copy to Marshal).

" 25 Summons issued as to J. D. Eason individually (Orig. & 1 to Marshal).

" 25 Summons issued as to J. D. Sims individually (Orig. & 1 to Marshal).

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- April 25 Summons issued as to H. M. Sawyer individually (Orig. & 1 to Marshal).
- " 25 Summons issued as to W. K. Morris individually (Orig. & 1 to Marshal).
- " 25 Summons issued as to G. O. Rutland individually (Orig. & 1 copy to Marshal).
- " 25 Hearing in Open Court on petition for a temporary restraining Order and for a preliminary injunction to be made permanent upon a final hearing. WAM.
- " 25 Plaintiffs Exhibits Nos. 1 through 37, Filed in Evidence (Enclosed in Vol. III).
- " 25 Memorandum in support of Complaint filed by Plaintiff.
- " 25 Taken under advisement by the Court.
- " 25 Defendants Exhibit A, Filed in Evidence (Enclosed in Vol. III).
- " 26 Order denying application for temporary injunctive relief. R-43 WAM.
- June 12 Summons returned unexecuted as to Local Lodge Div. 823 etc. 6-9-67.
- " 12 Summons returned unexecuted as to Brotherhood of Locomotive Engineers 6-9-67 at request of atty.
- " 12 Summons returned unexecuted as to Brotherhood of Locomotive Engineers 6-9-67 at request of atty.

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June 12 Summons returned unexecuted as to Local Lodge Div. 823 of the Brotherhood of Locomotive Engineers 6-9-67 at request of Atty.

" 12 Summons returned unexecuted as to G. O. Rutland etc. 6-9-67.

" 12 Summons returned unexecuted as to W. K. Morris etc. 6-9-67.

" 12 Summons returned unexecuted as to H. M. Sawyer etc. 6-9-67.

" 12 Summons returned unexecuted as to J. D. Sims etc. 6-9-67.

" 12 Summons returned unexecuted as to J. E. Eason etc. 6-9-67.

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May 23 Answer of Deft. Brotherhood of Locomotive Engineers and J. D. Sims.

" 23 Motion to consolidate with Case No. 69-351—Civ.—J.

" 27 Answer of Defts. Brotherhood of Locomotive Engineers and J. D. Sims.

" 27 Notice of hearing by special appointment 5-28-69 10 A.M. WAM.

" 27 Notice of hearing by special appointment 5-28-69/10 A.M.

" 27 Memo in support of motion to dissolve order for temporary injunction.

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- June 4 Motion for preliminary injunction.
- " 4 Memo in support of motion for preliminary injunction.
- " 6 Notice of voluntary dismissal and motion for voluntary dismissal.
- " 6 Memo in support of notice of and motion for voluntary dismissal.
- " 6 Memo in opposition to motion for preliminary injunction.
- " 6 Affidavit of Allan Milledge, Esq. Atty. for Defts. filed with exhibits. (See Volume II.)
- " 6 Hearing in Open Court on Motion for voluntary dismissal by Plaintiff and on (WAM) Motion for Preliminary Injunction by Defendants.
- " 6 Taken under advisement by the Court.
- " 20 Order denying pltf's motion for voluntary dismissal etc. R-52 WAM.
- " 23 Motion by pltf. to dissolve Injunctive Order dated 6-19-69, subsequent to final hearing.
- " 23 Application for entry of permanent injunction by pltf.
- " 23 Request to set for final hearing and motion for expedited final hearing by pltf.
- " 23 Order setting for hearing 11 A.M. 6-25-69. R-52 CBS.

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- June 24 Transcript of proceedings 6-6-69 at 10:30 A.M.
before Hon. Wm. A. McRae, Jr.
- " 24 Affidavit of Frank X. Friedmann (see Volume
II).
- " 25 Hearing in Open Court on pending motions.
- " 25 Court declines to rule on pending motions at
this time.
- " 25 Motion by Plaintiff to Stay Injunction Order
dated June 19, 1969.
- " 25 Motion by Plaintiff to Stay Injunction Order
dated June 19, 1969—Denied.
- " 25 Motion by Plaintiff to Suspend Injunction
pending appeal, Filed in Open Court.
- " 25 Motion by Plaintiff to Suspend Injunction
pending appeal—Denied.
- " 25 Court allows Attorneys to hand deliver record
on Appeal to Court of Appeals CRS.
- " 25 Notice of appeal filed.
- " 25 Bond on appeal secured by cash deposit filed.
- " 25 Request to clerk to certify and transmit par-
tial record.
- " 25 Order deferring ruling upon Pltff's motions etc.;
denying Pltff's motion to stay injunction order
dated 6-19-69; denying Pltff's motion to suspend
injunction pending appeal and amending Pltff's
request to Clerk to certify and transmit partial
record etc. R-52 CRS.

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- June 25 Proposed Order No. 1.
" 25 Proposed Order No. 2.
" 25 Proposed Order No. 3.
" 26 Transcript of Proceedings before the Honorable Charles R. Scott, commencing at 12:00 o'clock noon, Wednesday, June 25, 1969.

IN THE
 UNITED STATES DISTRICT COURT
 FOR THE MIDDLE DISTRICT OF FLORIDA,
 JACKSONVILLE DIVISION
 No. 67-335—Civ.—J.

ATLANTIC COAST LINE RAILROAD COMPANY,
 a corporation,

Plaintiff,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
 DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
 GINEERS; J. E. EASON, individually and as an official of
 said Brotherhood; J. D. SIMS, individually and as an
 official of said Brotherhood; H. M. SAWYER, individually
 and as a member of said Brotherhood; W. K. MORRIS,
 individually and as a member of said Brotherhood, and
 G. Q. RUTLAND, individually and as a member of said
 Brotherhood,

Defendants.

Complaint
 (Filed April 25, 1967)

The Atlantic Coast Line Railroad Company, a corpora-
 tion (hereinafter "ACL"), sues the Brotherhood of Loco-
 motive Engineers, an unincorporated labor association
 (hereinafter "BLE"), individually and as a representa-
 tive of its membership; Local Lodge Division 823 of the
 BLE for the Florida East Coast Railway Company, a
 corporation (hereinafter "FEC"); J. D. Sims, individually
 and as Assistant Grand Chief Engineer of the BLE; J. E.

Eason, individually and as Local Chairman of the BLE for the FEC; and H. M. Sawyer, W. K. Morris and G. Q. Rutland, individually and as members, agents and representatives of the Local Lodge of the BLE for the FEC, as defendants, and alleges:

COUNT I

1. The Court has jurisdiction of this suit because this is an action arising under the Constitution and Laws of the United States, and the amount in controversy exceeds the sum of \$10,000.00, exclusive of interest and costs. The jurisdiction of this Court is specifically invoked under Sections 1331 and 1337 of the Judicial Code (28 U.S.C., §§ 1331 and 1337), the Railway Labor Act (45 U.S.C., § 151, et seq.), the Interstate Commerce Act (49 U.S.C., § 1, et seq.) and Rules 17(b), 23.2 and 65, Federal Rules of Civil Procedure.

2. Plaintiff, ACL, is a corporation organized under the laws of the State of Virginia and is authorized to do business in the State of Florida. Plaintiff is a carrier under the Interstate Commerce Act (49 U.S.C., § 1, et seq.), is operating in more than one state and is subject to the Railway Labor Act (49 U.S.C., § 151, et seq.). Plaintiff as a common carrier, serves numerous communities within and without the State of Florida to which it provides extensive freight, passenger, mail and express service. Plaintiff serves numerous industries and plants not only with mail service but also with freight service and provides for such industries and plants supplies and materials vital for their existence. Further, plaintiff serves various instrumentalities of the Federal Government, including freight service of vital military equipment. Plaintiff is obligated under the Interstate Commerce Act to provide passenger service to

various individuals, mail service to the public at large, freight service to individual shippers and to communities at large and interchange service to numerous connecting railroad common carriers.

3. Defendant BLE is an unincorporated labor organization with its principal offices in Cleveland, Ohio, but with local lodges located in the Middle District of Florida. Defendant J. D. Sims currently and at all times material hereto has held the national office in the BLE designated as Assistant Grand Chief Engineer whereby he was and is charged with the responsibility of promoting, inducing and coordinating the acts hereinafter alleged. Defendant Sims, individually and in his official capacity as said national officer, did in fact promote, induce, and coordinate the acts hereinafter alleged. Defendant J. E. Eason is a resident of the Middle District of Florida and is the local chairman for BLE members employed by FEC in the State of Florida and individually and in said official capacity as local chairman has also promoted, induced and coordinated the acts hereinafter alleged and assisted the BLE and defendant Sims in promoting, inducing and coordinating such actions. Defendants H. M. Sawyer, W. K. Morris and G. Q. Rutland, as members, representatives and agents of BLE and Local Lodge Division 823 of the BLE, have picketed, displayed pamphlets and induced plaintiff's employees to cease work as hereinafter alleged. The other individual members of the BLE are so numerous as to make it impractical to bring them all before the Court individually.

4. ACL has various lines coming into and going out of the City of Jacksonville, Duval County, Florida, including main lines to Richmond, Virginia and Birmingham and Montgomery, Alabama, through which service is provided to various destinations north and west of said County and

including main lines destined to Tampa, Florida, serving points between Tampa and said County. The property and lines of FEC end at a point just to the north of the St. Johns River and to the south of the Jacksonville Terminal Company, the northeast Florida terminal facility for various user railroads. The rail lines of ACL in Duval County in no way adjoin or are directly connected to the rail lines or property of FEC. ACL does not own any part of the stock of ACL and does not in any way control the operation or management of ACL. FEC does not own any part of the stock of ACL and does not in any way control the operation or management of ACL. ACL operations are in no way integrated into the operations of the FEC and ACL furnishes to FEC no switching or other interchange service to FEC other than simple transfer of property rights in and responsibility for railroad cars from ACL to FEC and from FEC to ACL as hereinafter described. ACL furnishes no minor repairs or maintenance on FEC cars or locomotives. ACL provides no signaling or switching service for FEC in Moncrief Yard, Duval County, or elsewhere. ACL furnishes to FEC no goods, facilities, or services which are an integral part of the day-to-day operations of FEC.

5. FEC is a corporation organized under the law of the State of Florida and is a common carrier shipping various goods and commodities into interstate commerce and receiving various goods and commodities from various interstate railroads, including ACL. On September 25, 1963, FEC served notices under Section 6 of the Railway Labor Act (45 U.S.C., Section 156) demanding changes in rules, rates of pay and working conditions of its non-operating employees. This action eventually resulted in a strike by non-operating employees of FEC on January 23, 1963. The

property of the FEC has been picketed by a striking labor organization since that date advertising the union—FEC labor disputes. On March 12, 1967, at or about 12:01 a.m., FEC unilaterally made effective changes in rules, rates of pay and working conditions applicable to members of the BLE. The changes were made following service of a Section 6 Notice, dated November 30, 1964. Failure of parties to reach an agreement resulted in unsuccessful mediation with arbitration being rejected by FEC.

6. On Sunday, the 23rd day of April, 1967, without notice, the BLE, by and through its members, including defendants Sims and Eason, proceeded to distribute and to display letter-type pamphlets and to display picket signs at employee entrances to the property and interchange yard exclusively owned by ACL in Duval County, Florida, and known as Moncrief Yard. A sample of said letter-type pamphlets is attached hereto as Exhibit "A". The express and manifest intent of the BLE in distributing the pamphlets and carrying and displaying said picket signs was to induce the employees of ACL in Moncrief Yard to refuse to handle, move or carry out their regularly assigned duties with regard to any ACL railroad car which had arrived in Moncrief Yard from the FEC or which had arrived in Moncrief Yard destined to the FEC. Members of the BLE, who were not and are not employees of the ACL, patrolled and picketed at the aforesaid employee entrances for the purpose of distributing and displaying the pamphlets and displaying said signs and to induce and coerce both the ACL and its employees to cease handling said ACL cars which had arrived from or were destined to the FEC and thus to embargo FEC.

Railroad cars brought into the ACL Moncrief Yard by ACL crews which are ultimately destined for FEC remain the sole property and responsibility of ACL until such time

as they are placed on designated interchange tracks and necessary transfer documents are prepared and made available for acceptance by FEC. Railroad cars brought into Moncrief Yard from FEC and ultimately destined for ACL are brought by FEC crews which deposit them upon designated interchange tracks owned and controlled by ACL. Immediately upon deposit of said cars by FEC on ACL property and transfer or delivery of necessary documents to ACL, said cars become the sole property and responsibility of ACL. The sole purpose and results of the actual aforesaid distribution of pamphlets and patrolling by defendants is to induce employees of ACL to refuse to handle, move or otherwise carry out their regularly assigned duties in regard to said cars (1) prior to interchange and transfer to FEC on southbound traffic and subsequent to interchange and transfer from FEC on northbound traffic; (2) while the sole property and possessory rights to said cars are vested in ACL, without any property or possessory right then existing in FEC; and (3) while said cars are located solely on ACL property. The intent and purpose of this patrolling and the distribution of pamphlets was not lawfully to advertise or advise either the public or ACL employees of the BLE labor dispute with FEC.

7. As a direct result of the inducement and coercion by the BLE through the distribution of the aforesaid pamphlets and the aforesaid patrolling, the employees of ACL in Moncrief Yard have failed and refused to comply with the terms, written and implied, of the various labor agreements entered into between ACL and its employees represented by their respective Brotherhoods including defendant BLE. The aforesaid refusal by ACL employees to handle any ACL railroad car which has arrived from or is ultimately destined to FEC has resulted in the following:

(a) Total disruption of the interchange operations of ACL in Moncrief Yard which are necessary for continued operation of plaintiff's business;

(b) Effective blockade of railroad cars destined to points within the County of Duval and throughout the State of Florida and the United States;

(c) Stoppage of cars carrying citrus and other perishable goods, United States mail, military traffic, express lading, and other strategic materials;

(d) Inability to serve properly shippers within and without the County of Duval due to the necessity of using supervisory personnel from other points on ACL to operate Moncrief Yard and due to interference with traffic patterns and schedules;

(e) Complete disruption of interchange of freight between ACL and other connecting railroad common carriers, including Jacksonville Terminal Company, Seaboard Air Line Railroad Company, Southern Railway System and FEC.

(f) Substantial loss of profits by diversion of traffic and loss of traffic to other railroads by shippers within and without the County of Duval to a degree which cannot now be determined but which will be determinable in the future, and which threatens job standards and job security of ACL employees.

8. The BLE through the aforesaid distribution of pamphlets and patrolling seeks to induce and has induced the employees of the ACL to violate the intent and purpose of the Railway Labor Act as expressed in Section 2(1) and (5) (45 U.S.C., Section 151a (1) and (5)) and in direct violation of Section 3(i) of the Railway Labor Act (45

U.S.C., Section 153(i)). The aforesaid failure and refusal of ACL employees to handle, move or otherwise carry out their regularly assigned duties with regard to ACL cars located on ACL property in Moncrief Yard as aforesaid is in violation of their agreement to perform services which is implied from said employees' relationship with the ACL and from the applicable labor agreements between ACL and its employees represented by their respective Brotherhoods, including defendant BLE. The interpretation of the rules and working conditions required of ACL employees under the aforesaid agreements are in dispute as the result of the refusal of the aforesaid ACL employees to work, and, thus, a "minor dispute" subject to the jurisdiction of the National Railroad Adjustment Board has been thereby created and now exists. (45 U.S.C. 153). BLE and defendants Sims and Eason have conspired to induce and coerce and have induced and coerced the employees of ACL to cease work as aforesaid in violation of said existing labor agreements without exhausting the administrative procedures required by that Act for the settlement of a minor dispute.

9. The combination of defendants and the conspiracy of defendants to induce ACL employees to refuse to handle, move, or otherwise carry out their regularly assigned duties with regard to ACL cars ultimately destined to or previously received from FEC and the actual inducement and coercion of said employees to so refuse said service is in violation of Section 10 of the Interstate Commerce Act (49 U.S.C., Section 1). The actions of defendants to induce both the employees of ACL and ACL to refuse service to ACL cars having previously arrived from or ultimately destined to FEC and to embargo the FEC seek to force ACL and its employees to violate and is in violation of

Section 1(4), 1(11), 3(4), 1(15) and 1(17) of the Interstate Commerce Act, 49 U.S.C.

10. The aforesaid unlawful work stoppage by ACL employees and the present and continued interruption of plaintiff's business as the result of the acts of defendants, unless restrained or enjoined by this Court, will interfere, hinder, delay and prevent the movement of passenger, mail, freight and express lading, including products of industry and food and other freight essential to the public health and safety and essential to military defense. If said unlawful acts continue, they will obstruct, hinder and delay the interstate commerce over plaintiff's railroad and those of connecting carriers. Such unlawful acts, if allowed to continue, will cause irreparable damage to plaintiff in the particulars described above in paragraph 7, and also create irreparable damage to the United States Government and countless businesses, industries, individuals and other operating railroads.

11. Plaintiff is without an adequate remedy at law and will suffer the aforesaid irreparable harm unless the unlawful acts of defendants are restrained and enjoined. Plaintiff is informed and believes that the aforementioned illegal actions of defendants will be continued unless the relief prayed for is granted. Far greater injury will be inflicted upon plaintiff by denial of the relief sought than can result to defendants from the granting of said relief. Plaintiff will do equity in this cause and will negotiate with defendants or otherwise comply with all requirements of the Railway Labor Act and all other pertinent laws.

WHEREFORE, plaintiff prays that this Court issue a temporary restraining order forthwith and without notice, and a preliminary injunction to be made permanent on final

hearing, enjoining and restraining the above captioned defendant labor organization and the individual defendants, individually and as representatives, agents, officers, servants of the members of the class and craft represented by said labor organization, jointly and severally, and all other persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of any such orders of the Court from:

1. Impeding, obstructing, tampering, or interfering with the business and operations of plaintiff conducted and carried out by plaintiff on property under the ownership or control of plaintiff in Duval County, Florida, including without limitation that property known as Moncrief Yard.

2. Directing, ordering, inducing, causing, coercing, authorizing, recommending, sanctioning, calling, continuing, encouraging, assisting or participating in any strike, slowdown, stoppage of work, or other collective or concerted action designed to interrupt, retard or in any way impair the operation of plaintiff's business as conducted by plaintiff on property owned or controlled by plaintiff in Duval County, Florida, including without limitation that property known as Moncrief Yard.

3. Ordering, causing, authorizing, inducing, or attempting to induce, any employee of plaintiff to refuse to perform such employee's regularly assigned duties including without limitation those in regard to car service, switching, handling, unloading, moving, or other activities relating to or involving cars, rolling stock, engines, cuts, or trains of cars or any contents thereof located on property owned or controlled by plaintiff in Duval County, including without limitation that property known as Moncrief Yard.

4. Interfering with employees of plaintiff in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of plaintiff who refuses a lawful order to perform services for plaintiff in accordance with any collective bargaining agreement covering said services in, on or about plaintiff's facilities or supporting in any way any employee of plaintiff who refuses to obey a lawful order or request to perform such services.

5. Inducing or attempting to induce, individually or collectively, any other employee or class or group of employees of the plaintiff to perform any of the foregoing acts.

6. Directing, authorizing, ordering, sanctioning, or participating in patrolling, picketing, or blockading of any entrances or exits of any kind or description used by employees of plaintiff in connection with their work on property owned and controlled by plaintiff in Duval County, Florida.

Plaintiff further prays:

7. That the defendant labor organization, its appropriate officers, agents, servants and employees and the other defendants herein be directed and mandatorily enjoined to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendants' officers, agents, attorneys, or members, asking any of plaintiff's employees not to render service in connection with the operation of the plaintiff.

8. That plaintiff be granted such other and further relief as the case may require and as the Court shall deem proper.

COUNT II

1. Plaintiff realleges all of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 of Count I herein.

12. The BLE and the defendants Sims and Eason have induced and coerced the employees of ACL to unilaterally attempt to force a change in rules and working conditions by ceasing to perform the regularly assigned duties of their employment in violation of Section 2(1) and (4) and Section 6 of the Railway Labor Act (45 U.S.C., Section 151(1) and (4) and 156). The patrolling, inducing, distributing of the aforesaid pamphlets and instructing by said pamphlets by defendants was designed to and did result in a cessation of work by ACL employees as a result of a "major dispute" as to the rules and working conditions of said employees without prior exhaustion of requisite administrative procedures as set forth in aforesaid provisions of the Railway Labor Act.

WHEREFORE, plaintiff prays that this Court issue a temporary restraining order forthwith and without notice, and a preliminary injunction to be made permanent on final hearing, enjoining and restraining the above captioned defendant labor organization and the individual defendants, individually and as representatives, agents, officers, servants of the members of the class and craft represented by said labor organization, jointly and severally, and all other persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of any such orders of the Court from:

1. Impeding, obstructing, tampering, or interfering with the business and operations of plaintiff conducted and carried out by plaintiff on property under the ownership or

control of plaintiff in Duval County, Florida, including without limitation that property known as Moncrief Yard.

2. Directing, ordering, inducing, causing, coercing, authorizing, recommending, sanctioning, calling, continuing, encouraging, assisting or participating in any strike, slow-down, stoppage of work or other collective or concerted action designed to interrupt, retard or in any way impair the operation of plaintiff's business as conducted by plaintiff on property owned or controlled by plaintiff in Duval County, Florida, including without limitation that property known as Moncrief Yard.

3. Ordering, causing, authorizing, inducing, or attempting to induce, any employee of plaintiff to refuse to perform such employee's regularly assigned duties, including without limitation those in regard to car service, switching, handling, unloading, moving, or other activities relating to or involving cars, rolling stock, engines, cuts, or trains of cars or any contents thereof located on property owned or controlled by plaintiff in Duval County, including without limitation that property known as Moncrief Yard.

4. Interfering with employees of plaintiff in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of plaintiff who refuses a lawful order to perform services for plaintiff in accordance with any collective bargaining agreement covering said services in, on or about plaintiff's facilities or supporting in any way any employee of plaintiff who refuses to obey a lawful order or request to perform such services.

5. Inducing or attempting to induce, individually or collectively, any other employee or class or group of employees of the plaintiff to perform any of the foregoing acts.

6. Directing, authorizing, ordering, sanctioning, or participating in patrolling, picketing, or blockading of any entrances or exits of any kind or description used by employees of plaintiff in connection with their work on property owned and controlled by plaintiff in Duval County, Florida.

Plaintiff further prays:

7. That the defendant labor organization, its appropriate officers, agents, servants and employees and the other defendants herein be directed and mandatorily enjoined to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendants' officers, agents, attorneys, or members, asking any of plaintiff's employees not to render service in connection with the operation of the plaintiff.

8. That plaintiff be granted such other and further relief as the case may require and as the Court shall deem proper.

COUNT III

1. Plaintiff realleges all of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 of Count I herein.

13. Plaintiff holds itself out, and is required by law, to provide common carrier transportation service to the public in accordance with its tariffs, schedules, etc., on file with the Interstate Commerce Commission and the Florida Public

Utilities Commission. The failure to provide common carrier services required by law will subject plaintiff to damages, fines and penalties.

14. The aforesaid activities of the BLE and its members and of defendants Sims and Eason constitute the establishment of illegal picketing or patrolling of the aforesaid employee entrances to property owned and controlled solely by ACL, including that certain property at Moncrief Yard in Duval County, Florida. Said activities are in violation of the Interstate Commerce Act and the Railway Labor Act.

15. At all times material hereto and presently there has been and is now no labor dispute between ACL and its employees nor between ACL and the employees of FEC which has given rise to the aforementioned activities of defendants. At all times material hereto and presently there has and now does exist a collective bargaining agreement between ACL and its employees represented by BLE, which agreement is presently in full force and effect. No labor dispute exists under said agreement for which the aforesaid activities of defendants occurred.

WHEREFORE, plaintiff prays that this Court issue a temporary restraining order forthwith and without notice and a preliminary injunction to be made permanent on final hearing, enjoining and restraining the above captioned defendant labor organization and the individual defendants, individually and as representatives, agents, officers, servants of the members of the class and craft represented by said labor organization, jointly and severally, and all other persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of any such orders of the Court from:

1. Impeding, obstructing, tampering, or interfering with the business and operations of plaintiff conducted and carried out by plaintiff on property under the ownership or control of plaintiff in Duval County, Florida, including without limitation that property known as Moncrief Yard.

2. Directing, ordering, inducing, causing, coercing, authorizing, recommending, sanctioning, calling, continuing, encouraging, assisting or participating in any strike, slow-down, stoppage of work, or other collective or concerted action designed to interrupt, retard or in any way impair the operation of plaintiff's business as conducted by plaintiff on property owned or controlled by plaintiff in Duval County, Florida, including without limitation that property known as Moncrief Yard.

3. Ordering, causing, authorizing, inducing, or attempting to induce, any employee of plaintiff to refuse to perform such employee's regularly assigned duties, including without limitation those in regard to car service, switching, handling, unloading, moving, or other activities relating to or involving cars, rolling stock, engines, cuts, or trains of cars or any contents thereof located on property owned or controlled by plaintiff in Duval County, including without limitation that property known as Moncrief Yard.

4. Interfering with employees of plaintiff in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of plaintiff who refuses a lawful order to perform services for plaintiff in accordance with any collective bargaining agreement covering said services in, on or about plaintiff's facilities or supporting in any way any employee of plaintiff who refuses to obey a lawful order or request to perform such services.

5. Inducing or attempting to induce, individually or collectively, any other employee or class or group of employees of the plaintiff to perform any of the foregoing acts.

6. Directing, authorizing, ordering, sanctioning, or participating in patrolling, picketing, or blockading of any entrances or exits of any kind or description used by employees of plaintiff in connection with their work on property owned and controlled by plaintiff in Duval County, Florida.

Plaintiff further prays:

7. That the defendant labor organization, its appropriate officers, agents, servants and employees and the other defendants herein be directed and mandatorily enjoined to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendant's officers, agents, attorneys, or members, asking any of plaintiff's employees not to render service in connection with the operation of the plaintiff.

8. That plaintiff be granted such other and further relief as the case may require and as the Court shall deem proper.

ROGERS, TOWERS, BAILEY, JONES & GAY
By C. D. TOWERS, JR.

1300 Florida Title Building
Jacksonville, Florida 32202
Attorneys for Plaintiff

[Verified by L. T. Andrews, General Manager of plaintiff corporation on April 25, 1967.]

EXHIBIT A ANNEXED TO COMPLAINT

[Letterhead of Brotherhood of Locomotive Engineers,
Cleveland; Ohio 44114.]

Jacksonville, Florida
April 23, 1967

To All ACL Employees
Jacksonville, Florida

Dear Sirs and Brothers:

The FEC's striking engineers are clearly engaged in a major dispute (under the Railway Labor Act) against the FEC, we have the right to appeal to the employees of the ACL for help, to make common cause with us by refusing to handle FEC freight.

The FEC and its SCABS with the assistance rendered by the ACL are causing our engineers to suffer loss of all contract rights. We appeal to you to make common cause with us in this fight for our jobs. No freight from ACL means no money for FEC and its SCABS. HELP US.

Yours fraternally,

/s/ J. D. SIMS

J. D. Sims

*Assistant Grand Chief Engineer
Brotherhood of Locomotive Engineers*

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
No. 67-355-Civil-J.

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,

Defendants.

25 April 1967

At Jacksonville, Florida

Before:

HON. WILLIAM A. McRAE, JR.,

Judge.

**Extracts from Transcript of Hearing on Application
for Temporary Injunction**

[2]

Appearances:

For the Plaintiff—

MESSRS. ROGERS, TOWERS, BAILEY, JONES & GAY,
1300 Florida Title Building,
Jacksonville, Florida 32202

By: CHARLES D. TOWERS, JR., Esq.
ROBERT S. SMITH, Esq.
DAVID M. FOSTER, Esq.
FRANK X. FRIEDMANN, JR., Esq.

For the Defendants—

Messrs. RUTLEDGE & MILLEDGE,
601 Flagler Federal Bldg.,
111 N. E. First Street,
Miami, Florida.

By: ALLAN MILLEDGE, Esq.
RICHARD L. HORN, Esq.

[Testimony of MARSHALL COX JENNETTE—Direct]

[5]

Q. All right, sir. Now, Mr. Jennette, were you on duty over at Moncrief Yard in the early hours of this morning?

A. Yes, sir, I was.

Q. All right, sir. Now, would you tell us what took place out at the yard and in the surrounding area shortly after midnight in connection with your engine crews? A. We had one crew that went on duty at 11:30 to stop his engine at 12:05 AM this morning, adjoining—on tracks adjoining, right next to the yard office.

And I went out to the—I heard that the crew had stopped work and went out to see who it was, and it was Engineer J. R. Stalings; and he had gotten off the engine with his bag and was walking away from the engine toward the parking lot.

Two of his trainmen were very close to him, and we called to him and he stopped; and we asked him why he was leaving the engine and he said that he had been asked to handle some cars destined to [6] the East Coast Railroad and that he could not handle those cars. That he had worked the night before handling them and that he had decided that he could not handle them any longer.

And we asked him who instructed him not to handle the cars, and he said that the Brotherhood of Locomotive Engineers—

.

Q. Go ahead Mr. Jennette. A. He said that he had been a member of the Brotherhood of Locomotive Engineers for many years, paying dues, and that he didn't see any need of belonging to an organization unless he was going to do what he was told to do by them.

And we asked him who in the organization gave him such instructions, and he said the Vice Chairman, Mr. Sims.

.

[7]

Q. Now, Mr. Jennette, would you tell the Court what activities, if any, began this past Sunday, two days ago, in the close proximity of your Moncrief Yard? A. Well, I got home—got a call Sunday afternoon, about 3:00 o'clock, that there was some Florida East Coast engineers on Fifth Street, leading into the Moncrief Yard, and they were displaying some signs.

And I immediately went to Moncrief Yard.

I observed six Florida East Coast engineers who had some signs that were very prominently being displayed, and I asked what the intent of the signs was, and they said it was to stop the interchange [8] of cars between the Coast Line and the Florida East Coast Railroad. That they were not asking the Coast Line employees to refrain from reporting to work. Merely the intent of them was to stop the cars from being interchanged between the Coast Line and the Florida East Coast Railroad.

Q. All right, sir. Now that was on Sunday, the 23rd of April? A. That was Sunday afternoon, somewhere between three and four o'clock, when I first arrived there.

.

[9] Q. All right, sir. When did you next observe any activities of this nature? A. On Monday morning I arrived there at 6:40 and the same men with the same signs were at the same location on Fifth Street leading into Moncrief Yard and they were stopping or attempting to stop cars. Some stopped and some didn't.

Those that didn't understand what it was would stop, and these men would go over to the cars and have conversations with the occupants of the cars; conversation which I did not hear or participate in.

[12]

Q. Now, Mr. Jennette, did you tell us what time this incident occurred that you described with Mr. Stalings?

A. Mr. Stalings got off the engine at 12:05 AM this morning.

Q. All right, sir. That is, April 25? Today? A. April 25.

Q. All right, sir. Now would you tell the Court what else took place after this Stalings incident this morning?

A. Well, I went back in the Superintendent of Terminals' office in the yard office.

At 12:15 this morning Engineer Brown, C. E. Brown and his crew, came in the yard office and on into the office in which Mr. Wright, the Train Master, and I were located.

And he was asked why he was coming in, and he said that he had been asked to move some cars off of Track 6 in H Yard, which had been delivered by the Florida East Coast Railroad, and that he could not switch those cars.

[13] We asked him why he could not, and he said that he been asked by Mr. Sims, of the Brotherhood of Locomotive Engineers, not to handle cars to and from the Florida East Coast Railroad.

The Court: What is the exact office that Mr. J. D. Sims occupies, Mr. Jennette?

The Witness: The yard office?

The Court: No. What is his official connection with the Union?

The Witness: Mr. Sims?

The Court: Yes.

The Witness: I believe it is Vice Chairman of the Brotherhood of Locomotive Engineers, isn't it?

Mr. Milledge: It is Assistant Grand Chief Engineer. A Grand—Lodge office; an international office.

The Court: He is the top man locally of the Brotherhood, is that correct?

Mr. Milledge: He is assigned from the Cleveland office.

The Court: Yes.

Mr. Milledge: For this particular [14] problem. He is the top man on this problem.

[16]

Q. All right. Now, Mr. Jennette, would you please describe the next incident, if any, that took [17] place in the early morning hours this morning? A. Well, we attempted to get someone to relieve the first engineer, Stallings, who had walked off; and the only man we had on the Extra Board was Mr. M. L. Adams, and he was called to come and work this job.

And he got a call at the Yard office to call his Local Chairman, Mr. Shirley, upon arrival at the Yard office; and before he got there we put someone on the engine to go ahead and start working. And when Mr. Adams got there he made some phone calls and he stated that he could not go to work; that he could not handle cars to or from the Florida East Coast Railroad.

And we asked him why, and he said that he had been asked by Mr. Sims not to handle the cars.

[18]

Q. Mr. Jennette, would you clarify a little bit whether Mr. Shirley called him—telephoned him—or did he telephone Mr. Shirley from the Yard office? A. Mr. Shirley called the Yard office before he got there and left a number for him to call; so he actually called Mr. Shirley upon arrival at the Yard.

Q. Now who is Mr. Shirley? A. He is the Atlantic Coast Line's Local Chairman for the Locomotive Engineers.

[20] Q. All right, sir. Did Mr. Adams ever get up into the engine at all? A. No, sir.

Q. He came direct to the Yard office and he left direct from there? A. Yes, sir.

All right, sir. What was the next happening out there, out of the ordinary? A. Well, later on this morning there were two other incidents where engineers refused to handle cars that were destined to the FEC Railroad, which were placed in the B Yard of the Atlantic Coast Line's Moncrief location.

Q. This B Yard, is it entirely within the confines of property owned by the Atlantic Coast Line Railroad?

[21] A. It is, yes sir.

Q. Are all these other yards that you have referred to designated within the confines of the property lines of the Moncrief Yard? A. Oh yes. That is Atlantic Coast Line Railroad property altogether.

Now have there been anymore occurrences that have taken place out there? A. Well, at 7:55 this morning Engineer Baker, who was instructed to pull some cars on Track 17 in C Yard and place them in B Yard, which were destined to the Florida East Coast Railroad, refused to move those cars; and I went with Mr. Strickland out to the engine, and he stated that he feared harm to him or his family and that for that reason he would not [22] want to move these cars. And he and his fireman both left the job.

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[23] Q. Did you have a telephone conversation last night? With Mr. Sims? A. I got a call just before one AM this morning to call Mr. Sims, and I dialed him three times and on the third time I was able to get him. His line was busy the first two times.

Q. All right, sir. Would you tell the Court what he said to you about the operation of the Moncrief Yard? A. Well, he seemed to be quite upset and his words to me were that he was going to shut down the Coast Line Railroad and I could tell my management about it.

[29]

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Cross Examination by Mr. Milledge:

Q. Mr. Jennette, your men at Moncrief Yard go on duty when, generally? A. At three times a day, under our contract, we can put switch crews on duty.

Between 6:30 AM and 7:59 AM. Between—

The Court: What are those hours again? 6:30?

The Witness: 6:30 AM and 7:59 AM.

Between 2:30 PM and 4:00 PM.

And between 10:30 PM and 11:59 PM.

By Mr. Milledge:

Q. Now when you came out on this past Sunday afternoon to the Moncrief Yard, to the employees [30] entrance, were the men—the FEC engineers—already out there with their signs? A. Yes, sir.

Q. Do you know or have you heard about when they came out? A. Around 2:15 PM.

Q. And they stayed there until about four? A. It was later than that. I think it was nearer five.

I said to them, "All the crews are on duty." The six crews had gone on duty. "And there will be no more going on duty until after ten o'clock tonight."

They immediately left.

Q. All right. Now when you went out on Sunday afternoon did you identify yourself to them? A. Yes, sir. Mr. Sawyer—I went over and talked to him and he introduced me to other men out there.

Q. All right. You knew who they were? A. Yes, sir.

Q. All right. And did they tell you why they were out there? A. Yes, sir.

[31] Q. Did they tell you that they were asking men not to go to work? A. No, sir. They said they were asking men not to handle Florida East Coast cars to or from, and that they were urging them to go to work.

Q. Now have these pickets, to your knowledge, been out there at the Moncrief Yard at the employees entrance at each crew change or at the times of crew change since then—Sunday? A. Yes, sir. Everytime, from Sunday PM.

Q. And they come a little before the crew—the first crew would report to work, and then leave sometime after the last crew has reported? A. Yes, sir. They come about 30 or 40 minutes before crew changes.

Q. All right. You haven't been out there on every occasion but you have been out there on some? A. I have been out there part of every occasion, I believe.

Q. Have you? All right. A. I believe I have.

Q. All right. And you have had conversations either with pickets or with some Brotherhood of Locomotive Engineers representative on each of those [32] occasions, haven't you? A. Except yesterday afternoon.

Q. All right. A. I didn't stop as I passed there around three PM.

Q. All right. And the instructions—the operation has remained the same, has it not, from Sunday afternoon on? Until now? A. The operation or the signs?

Q. The signs? A. The signs have all been the same.

Q. The hand-outs and what they are requesting of the ACL employees. A. As far as I can tell, it has been the same.

Q. Now where is interchange between ACL and FEC performed? A. It is performed in H and B—B and H Yard, on Atlantic Coast Line property.

Q. Now, the Florida East Coast engines come on to ACL property? A. They come on ACL tracks and property in H Yard to make deliveries and in B Yard to pick up cars destined to the FEC.

Q. Where do those FEC engines come from? [33] A. The Bowden Yard.

Q. And that is across the St. Johns River, south of the St. Johns River? A. That's right, yes sir.

Q. And those FEC engines come on up and they come all the way through the Jacksonville Terminal property? A. Yes, sir.

Q. Then they come into Moncrief Yard? A. That's right, yes, sir.

Q. Now do ACL engines make deliveries to or receive freight from Bowden Yard? That is, the FEC Yard? A. Only through the FEC.

Q. All right. In other words, all interchange of freight with FEC, both receiving and delivery—both ways—is done in Moncrief Yard? A. Moncrief Yard and Yards B and H.

Q. And are there tracks there that are designated in the B and H Yard as interchange tracks? A. Yes, sir.

Q. How often per day do FEC engines come into your yard? A. Well, on an average I would say at least six times a day.

[34] Q. Now the men, as you understand it, are they being asked not to classify—that is, not to move around—let's just strike that.

You know what "classify" means. Right? A. I do, yes.

Q. All right. Have they been asked not to classify freight up in the C Yard part of Moncrief? A. Apparently they have not been asked not to classify inbound trains; but apparently they have been asked not to classify inbound cuts of cars wholly from the Florida East Coast, because we have had them to refuse to do that.

The Court: What do you mean by "classify"?

The Witness: Break up and put them in blocks where they are going to move to points, say, Waycross—Atlanta—Savannah—Florence—Richmond.

We get them scrambled, so to speak, and we block them out for certain trains for certain Terminals.

The Court: Thank you.

By Mr. Milledge:

Q. Mr. Jennette, you really have a number [35] of separate Yards within Moncrief, is that right? A. Moncrief Freight Yard is made up of B Yard, C Yard, and H Yard where the primary classification and the inbound trains are received and depart.

We have another Yard known as F Yard which deals almost wholly with the Fruit Growers Express operations adjoining us there.

Q. Now, in regard to the FEC what is done in B Yard?

A. Cars are usually classified in H Yard, and some in C Yard. And when these cuts reach, say, 30 or 40 cars, or the cars on hand have been completed, they are then moved from C Yard down into B Yard where later they are picked up by FEC engines.

Q. When an FEC engine comes up north—comes from Bowden— A. Yes, sir?

Q. And comes through Jacksonville Terminal and comes into your Moncrief Yard with a cut of cars from FEC destined to ACL, what does that FEC engine do with them? A. That pulls in H Yard and cuts off.

Q. All right. Now have any of the engineers refused to pick up that cut of cars or a cut of cars in H Yard from FEC? [36] A. Yes, sir.

Q. And who was that? A. Mr. Stalings.

Q. All right. A. And Mr. Adams.

Q. All right. A. No. Mr. Stalings and Mr. Brown. Excuse me.

Q. Mr. Stalings and Mr. Brown? A. Yes.

Q. Now their job with ACL would have been to take that cut—they would have been the first ACL engine or ACL crew to handle that cut of FEC cars—the cut brought in by FEC. A. That is true.

Q. And so those two engineers refused to move them? A. Yes.

Q. Right? A. Yes.

Q. Now where would they normally have been taken from there? From that interchange track in H Yard? A. They would have been pulled up the ladder [37] by the Yard office and classified and blocked, as I referred to awhile ago.

Q. Would they have been moved up into H Yard? I mean into C Yard? A. Some of them might have been classified in C Yard and some of them might have been classified in H Yard, depending on what train they were building at that time.

Q. All right. Now when Mr. Brown—Engineer Brown—refused to couple up, I guess you would say— A. Yes.

Q. —with this cut that had been—cars that had been brought in by the FEC, he was relieved. A. Yes.

Q. Was he not? A. Yes, sir.

Q. Now did you relieve him just of the one move up into C Yard or further into H Yard? Or did you relieve him for the rest of that tour of duty? A. He was relieved and he took his bag and left the property; so you might say that.

The Court: I am not sure that I understand what you mean when you say "relieved."

[38] The Witness: Well, he was already off the engine in the Yard office, and the engine was out there and had work to do; and he took his bag—most engineers carry a little hand bag with them—and he left the property; got in his car and drove away.

It means that his pay stopped, if that is better understood.

By Mr. Milledge:

Q. When we talk about taking one's bag, it is not like leaving home or anything. They carry a bag when they get on the engine? A. That's right.

Q. And they take the bag home with them each night, don't they? A. Yes, sir.

Q. Mr. Jennette, there was a little unhappiness last night about what "relief" did mean, wasn't there?

Wasn't there quite a bit of conversation about that between you and Mr. Sims and all of us involved?

Wasn't there? I am not asking you what the conversation was. There was conversation about it? [39] A. There was conversation.

Q. All right. A. Around midnight.

Q. I think that is all I really ask.

Now did you have any engineers refuse to make delivery into B Yard for FEC? A. Yes, sir.

Q. All right, who was that? A. I believe that the only instance we had of that was at 7:55 this morning when Mr. Baker, whom I referred to, refused to make a delivery in B Yard.

Q. Now that would have been the last ACL move before FEC picked it up? A. Yes.

Q. In other words, that engine was delivered into the interchange track and then FEC would come with an engine and pick it up? A. That is true.

Q. And that interchange track, in Yard B, is in the south end of Moncrief Yard? A. That is true.

Q. That is ACL property? A. Yes, sir.

[40] Q. Now you observed the activities of these FEC engineers at the Moncrief employees entrance. You had a chance to observe their demeanor, and so forth? A. Yes.

Q. Was their demeanor in all respects peaceful? A. It certainly was.

Q. Now if the engineers of the ACL—let me strike that and start all over.

If no cars were delivered into your interchange track in B Yard for FEC that would stop all freight movement from ACL to FEC, would it not? A. Yes, sir.

Q. And if your engineers would not pick up the interchange that FEC leaves in H Yard, that would stop all

northbound movement from FEC to ACL? A. Yes, sir. And it would also tie up Moncrief Yard too.

Q. Now, let's just talk about that on northbound movements.

How many tracks do you have set aside for the FEC to leave freight in for interchange? A. I believe, under the agreement, there [41] were approximately maybe three tracks mentioned—three or four tracks mentioned.

Q. And so if the ACL engineers refuse to take that freight out of those interchange tracks in H Yard, how would that tie up your Yard? A. Well we use those same tracks for the Seaboard to make deliveries too; and we have to stagger it from one track to another when the Seaboard and East Coast are coming in. And sometimes we have to hold them out until we can clear a track to make room for one or the other of them to come in that part of H Yard.

The Court: In effect, it amounts to the tracks just being blocked by cars?

The Witness: Yes, sir.

The Court: That would be true both of deliveries to ACL on H Yard and the pickups of ACL on B Yard?

The Witness: That's right.

The Court: It would be blocks or cuts of cars that would block the tracks?

The Witness: They would be literally reducing the Yard by that many tracks. The Yard is already too small.

[42] *By Mr. Milledge:*

Q. Well now, how many interchange tracks do you have in H Yard designated for FEC? A. I think under the agreement there were either three or four mentioned.

Q. All right. A. I am not sure.

Q. And how many tracks are there all told in H Yard?

A. I believe there are ten—ten or eleven; I am not sure.

Q. And how many tracks in B Yard are designated for FEC interchange? A. About the same number. There are about two or three tracks mentioned in B Yard for the interchange.

Q. How many tracks are there altogether in B Yard?

A. Oh, again, I think there are approximately ten tracks maybe in B Yard.

There might be a few more.

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[43]

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Redirect Examination by Mr. Towers:

Q. Mr. Jennette, just so we can get straight geographically, could you tell the Court approximately where the Florida East Coast property line ends with respect to the St. Johns River or any other landmark? A. The Florida East Coast has a right-of-way across the St. Johns River and up to Riverside Avenue of one track, which would be considered the southbound track in a double track operation.

The northbound track, between the river and the Riverside Avenue Bridge, is owned by the Jacksonville Terminal Company.

Q. All right, sir. Now, after the Florida East Coast Line property ends, what is the next property to the north of that point? A. That is the Jacksonville Terminal Company property.

Q. All right, sir. Then, continuing in a northerly direction, where do you come to the property of the Atlantic Coast Line Railroad, as far as the [44] railroad tracks

are concerned? A. Soon after you cross over McQuade Street what is known as the Moncrief Yard property starts. Moncrief Yard begins.

Q. Where is McQuade Street with reference to the south end of Moncrief Yard? A. It is right near the south end of Moncrief Yard.

Q. Sir? A. It is at the south end of Moncrief Yard.

Q. The south end of Moncrief Yard is at McQuade Street, is that right? A. That's right.

Q. And then the Yard extends on up in a northerly direction to approximately Old Kings Road? A. That is true, yes, sir.

Q. All right now, all of these movements that we have reference to that these engineers refused to do are movements within the property confines that you have given us here that constitutes Moncrief Yard? A. Yes, sir.

Q. Approximately how far is it from the [45] north end of the Florida East Coast Line property and the south end of the Atlantic Coast Line's Moncrief Yard there near McQuade Street? A. Well, it must be around a mile and a quarter or a mile and a half, at least.

• • • • •

[55]

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DEWITT M. STRICKLAND produced and sworn as a material witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Towers:

• • • • •

Q. All right, sir. Now, Mr. Strickland, [56] do you refer to certain tracks within Moncrief Yard as H Yard or B Yard or C Yard, or definitions of that type? A. Yes, sir. Moncrief Yard consists of several Yards. We designate certain sections as Yards.

Q. Is it all one integral part? A. Yes, sir.

Q. In other words, the fact that you call certain tracks a "Yard" or certain tracks "H Yard" or certain tracks "B Yard", or something else, is just a way of distinguishing those particular tracks from other tracks?

They are all within Moncrief Yard; is that correct? A. That is correct.

Q. It is one integrated operation? A. Correct.

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Q. All right, sir. Would you tell the Court the details of these occurrences? A. About 4:45 AM this morning the General [57] Yard Master, Mr. Paine, informed me that he had a Yard crew that he had instructed to deliver or move some cars from C Yard down to B Yard and the engineer had said he couldn't move the cars.

At that time the engine was approximately 200 feet from the office where I was and I walked out to the engine.

As I got near the engine, Mr. G. E. Black was the Engineer and he came off of the engine with his bag.

And I asked him what the trouble was and he said he couldn't deliver cars down to the B Yard.

Q. When you say "down"— A. South.

Q. Are you indicating in a southerly direction, all within the Yard? A. Yes. All within the Yard.

And he replied that he had his instructions and that I had mine, and he had been asked not to move the cars from C Yard to B Yard, all within the Moncrief area.

Q. Did he say who had instructed him not to? A. He had received those instructions, [58] he said, from Mr. Sims and Mr. Shirley.

Q. He had received them from Mr. Sims and Mr. Shirley, is that right? A. Yes.

Q. All right, sir. What else took place in that conversation? A. I asked him if he still didn't want to move

the cars or wouldn't move the cars, and when he said that he wouldn't, I told him that he was relieved as of 4:55 AM.

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The Court: You can hold it up. Possibly Mr. Robinson can assist you there.

I am still a little uncertain about your use of the word "relieve."

[59] You just stopped his pay and said, "You can go home." Or did you fire him? Or what did you do?

The Witness: No, sir. We just told him he was relieved of that assignment.

The Court: Of that particular assignment?

The Witness: Yes. We didn't specify the assignment, Judge. We just said, "You are relieved;" because this is what we have got for him to do.

The Court: He was relieved of his duty at that time.

The Witness: At that time.

The Court: At that time?

The Witness: Yes, sir.

The Court: Of that particular assignment.

The Witness: That is correct.

The Court: I see.

[66]

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Mr. Milledge: I will just ask him a few questions while the map is up.

Mr. Towers: That's all right.

Mr. Milledge: Mr. Strickland, I will talk to you back here, but how far do the FEC engines [67] come into this Yard? That is, Moncrief Yard?

The Witness: When they are delivering traffic from Bowden to the Coast Line, they come in H Yard, and the engine itself will go almost to the Yard office, because they have to deliver the documents.

The cars are dropped before they get to the Yard office. They cut those off.

Mr. Milledge: All right, sir. So when they are bringing northbound traffic they bring it up into H Yard?

The Witness: Yes, sir.

Mr. Milledge: That engine?

The Witness: Yes.

Mr. Milledge: Then that engine travels all the way down here in the vicinity of the Yard office?

The Witness: Right close to the Yard office.

Mr. Milledge: And then it comes all the way back out. All right, sir.

Now, how about when an FEC engine is coming to receive traffic?

The Witness: They come into B Yard from the south end.

[68] We have a clerk located in a little office down near B Yard or by B Yard there, and the documents for the cars and the check is made by that clerk.

They simply come up as far as is necessary to get to the cars at the south end of the Yard.

Mr. Milledge: The Yard office, is it in the area of this large building that says "Motor Shop"?

The Witness: That is the Shop; the Yard office.

[69]

Q. All right. Would you tell the Court about this, and you may demonstrate on this map when you refer to the Yard which may or may not be involved. A. About 7:45 AM I was informed by the Yard Master that one of the engines did not want to move cars from C Yard 17, which would be approximately along there, down to B Yard, which would be down here.

I walked out and the engine was about—oh maybe a hundred feet from where we were.

Q. Where was that on the map? A. The engine was along in this area, in the north end of Track 18.

Q. All right, sir. A. And Mr. F. L. Baker was the Engineer, [70] and he had a Fireman, Mr. Mathews, J. R. Mathews.

Mr. Baker was still up on the engine and I got up on the engine and talked to Mr. Baker and I asked him what the trouble was.

And he said he couldn't move the cars from C Yard 17 down to B Yard.

And I asked him why, if he had any instructions not to move them; and he said he had not.

But he did say that he had delivered cars or made cars or moved cars from C Yard to B Yard the day before and he had received a telephone call—which would be last night now—threatening him or his family if he continued to move these cars.

He said he was just afraid to move them. He was not so much concerned about himself as he was his wife.

And since that was his job that we had for that assignment I notified Mr. Baker, or advised him, at 7:55 AM, that he was relieved.

Now Mr. Mathews—

Q. He was the Fireman with Mr. Baker? A. He was the Fireman with Mr. Baker. And, as Mr. Baker was leaving—I had not talked with Mr. Mathews—but he said; "Well, I am going too, because I received a telephone call last night also, threatening me."

[71]

Q. Mr. Strickland, previous to these occasions—previous to Sunday, April 23, what was the condition of Moncrief Yard as far as traffic is concerned? A. Traffic had been

very heavy through Moncrief Yard. We had been operating at capacity; all we could handle.

Q. All right, sir. Now, Mr. Strickland, with this conduct on the part of these employees, would you tell the Court what will happen with respect to the operation of Moncrief Yard? A. If we don't keep the cars moving we will [72] become blocked and congested.

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Cross Examination by Mr. Milledge:

Q. Mr. Strickland, since last Sunday the engineers whose duties do not involve picking up interchange from the FEC in H Yard or delivering interchange to FEC in B Yard—the other engineers—have they all performed their duties? A. Yes, sir.

Q. And the men who have not made these movements you have talked about, up to that point in their tour of duty they have been doing their regular work? A. Yes, sir.

Q. Right. And at the point where they were stopping their engines, as you have told us, that was when they either had to carry freight down to FEC or pick it up from FEC. I mean from the interchange track. A. They were carrying freight down to B Yard where the FEC would eventually get it; yes, sir.

Q. All right. In the two instances you testified to. [73] A. Both of the incidents I testified to.

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[Testimony of L. T. ANDREWS—Direct]

[76]

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Q. Do the Coast Line tracks in any-way join to or directly connect with the tracks of the Florida East Coast? A. No, sir.

Q. Are the operations of the two companies in any way integrated? A. No, sir.

[77] Q. Does the Coast Line furnish any switching service to the Florida East Coast? A. No, sir.

Q. Does it furnish any repairs or maintenance upon any Florida East Coast cars or engines? A. No, sir.

Q. Does the Florida East Coast own any stock in the Coast Line or does it in any way control the operations or management of the Coast Line? A. No, sir, it does not.

Q. What is the southernmost point of the Coast Line's property in relationship to the northernmost portion of the FEC's property which you just described. A. The southernmost property of the Atlantic Coast Line ends right about McQuade Street, which was pointed out on the exhibit—the map of the Yard—a short time ago; and it is approximately, I would say, about a mile and a half distance between the Atlantic Coast Line and the Florida East Coast tracks.

Q. All right, sir. Does the Coast Line furnish any switching service to the Florida East Coast cuts and engines which bring Florida East Coast cars on to ACL property? [78] A. No, sir.

Q. Do any Coast Line employees furnish any signals for FEC crews in Moncrief Yard? A. No, sir.

Q. Does the Atlantic Coast Line, in Moncrief Yard, furnish any personnel services to Florida East Coast employees? A. No, sir, we do not.

Q. Do any FEC employees report to or leave work on or at Moncrief Yard? A. No, sir, they do not.

Q. Do any FEC employees report to or leave work from any property owned by the ACL? A. No, sir.

Q. Does the ACL in Moncrief Yard furnish any personnel services to Florida East Coast employees? A. No, sir.

Q. Does the ACL furnish any minor or major repairs or maintenance on cars or engines for the account of the FEC? A. No, sir.

Q. Does ACL provide any maintenance on tracks owned by FEC or over which FEC has an exclusive easement? A. No, sir, we do not.

[79] Q. Does the FEC own any stock in the ACL? A. No, sir.

Q. Does the ACL own any stock in the FEC? A. No, sir.

Q. Do ACL and FEC have any operating agreement which controls or affects the management of the Coast Line? A. No, sir.

Q. Does the FEC have any prerogative in the election of officers of the ACL? A. No, sir.

Q. Does the ACL provide to the FEC any facilities or services which constitute an integral part of the day to day operations of the FEC? A. No, sir, we do not.

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[80] Q. All right, sir. And will you briefly describe the movements of cars and Yard engines coming from the FEC for interchange with the Coast Line? A. On the cars and Yard engines coming from the FEC to interchange with the Atlantic Coast Line, they come up over the Florida East Coast from its Bowden Yard; across the St. Johns River, where they enter upon the tracks of the Jacksonville Terminal Company and travel about a mile and a half.

Then they enter upon tracks of the Atlantic Coast Line at the south end of Moncrief Yard.

Q. All right, sir. Now at what point do these cars become the sole property and responsibility of the Atlantic Coast Line? A. After the cars are placed in the desig-

nated interchange tracks in H Yard, upon receipt from the FEC, the engine cuts loose, and the weigh bill or documents are delivered to the Coast Line forces at the Yard office at Moncrief; the cars then belong to the Atlantic Coast Line Railroad.

Q. At that time do they have the responsibility for them? [81] A. That is correct.

Q. Please tell us what is done with cars coming into Moncrief Yard which are destined for delivery to the Florida East Coast? A. Cars arriving at Moncrief Yard for delivery to the FEC, to the Florida East Coast, are separated or sorted out in the C Yard area; placed on certain tracks; and when we get, oh, 20 to 30 cars or so blocked together, then we send them to B Yard via switch engine, at which point they are placed in designated interchange tracks for the Florida East Coast.

The documents covering the cars are made available at the little Yard office located adjacent to the B Yard track, where the documents are then available to the FEC.

And, after the cars are placed in that designated track and the documents are then made ready for the FEC cars, the cars then belong to the FEC, but not until that transaction is completed.

Q. All right, sir. Now, after they have been placed on these tracks that you have just described and the documents are made available for the FEC, do the cars then become the sole property and the [82] responsibility of the FEC? A. That is correct.

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Q. Tell us, sir, what the results have [83] been from what has taken place within the last 48 hours. A. Well, on account of the pickets, or what you may call them, being

placed at the entrance to the Moncrief Yard and the signs they are displaying, and the conversations, and the letters they are displaying to Coast Line employees, there has been a general unrest or unhappy situation at Moncrief.

And, commencing shortly after midnight last night, we had some definite refusals on the part of the Coast Line assigned engineers to move cars from one location to another within Moncrief Yard, and that disrupts the orderly procedure of the Yard operations and causes a very bad congestion, and we get behind with the work; and it is just a bad operation.

Q. Is it possible to move, classify, and place upon tracks for delivery cars destined to other railroads, as well as cars destined to other points on the Coast Line tracks, without also moving cars destined for the FEC? A. No, sir. A train comes into Moncrief Yard. It will have cars for Jacksonville proper, for the Seaboard—for the Southern—for the FEC. And, in order separate the cars as to where they go [84] and how to get them in proper blocks or cuts for delivery to the various railroads or for placement in Jacksonville, you have got to break up the entire train; which means the crew assigned to perform that work has to handle all the cars in the train in order to carry on its assignment.

Q. Is it possible to operate Moncrief Yard with supervisory personnel? A. No, sir. It is a big operation out there.

Q. Can Moncrief Yard operate without handling all of the cars that come into it—that is to say, without speedily and efficiently classifying and dispersing cars coming into the Yard, for proper delivery to other points?

The Witness: No, sir. We could not operate or cannot operate Moncrief Yard unless all of the cars received into the Yard are properly and promptly dispatched to whatever destinations or [85] locations they should be handled to.

Q. Kindly describe the manner in which ACL is suffering damage, if in fact it is, as a result of what you have just told us. A. Well, right now the situation is very badly congested out there. And of course when we had a work stoppage or slow-down the customers of the Coast Line very promptly know about it. We are not able to handle the business and make deliveries or handle the out-bound shipments like we should. And they immediately look around to see if they can find some other way to handle their freight.

As to the monetary suffering or loss that we have, it is not practical to determine it at this time; but it is certainly reasonable to assume that it is occurring.

Q. Is it possible to interchange with the Seaboard, Jacksonville Terminal, or Southern Railway, with your employees refusing to handle cars destined to or coming from the FEC? A. No, sir, we have got to keep all of the cars moving in and out of the Yard. We can't just move one particular—cars, for one segment of our operation.

[86] Q. All right, sir. With respect to your answer to the preceding question—about shippers who choose another method of shipping whenever they are unable to ship over ACL, is this a temporary or permanent loss of revenue? A. In many cases it is a permanent loss.

If a man or concern resorts to some other means to get his goods transported, sometimes he finds that—"Well, you couldn't handle me in the situation when I needed your

services so I will just stick with the fellow that could." It could mean a permanent loss.

Q. Well will railroad traffic be able to slow in a northerly direction out of Moncrief Yard and in a southerly direction into Moncrief Yard in spite of the situation that has been described? A. No sir. We cannot continue to move the traffic unless we get the situation straightened out at Moncrief.

Q. Are through freight trains destined for Waycross and points north from Jacksonville made up in the Moncrief Yard? A. Yes, sir.

Q. Are through freight trains from Waycross [87] and other points north broken up and reclassified in the Moncrief Yard? A. Yes, sir.

Q. Please describe the type of freight being carried on such freight trains. A. The trains handle all commodities, of all descriptions. Handle a lot of perishables. And they handle U.S. mail and Piggyback Service.

They handle Government materials and some of it is incident to the present Vietnam situation.

And just any kind of commodity that the shippers have for movement.

Q. Approximately how many of the freight trains just described move into and out of Moncrief Yard each day?

A. There is an average of about nine trains in and out of Moncrief Yard from the north; and to the south of Tampa side there would be, oh, about four or five in each direction.

[88]

Q. Do all main line tracks from the north into the State of Florida, and from Tampa through Duval County, pass through Moncrief Yard? A. Yes, sir.

Q. Do all ACL trains going to Richmond through Waycross and points north have to pass through Moncrief Yard? A. Yes, sir. When they come from Jacksonville.

[94]

Q. Could you please tell us the total number of cars reclassified in Moncrief Yard in December of 1966? A. We handled approximately ninety two hundred cars on the basis of a double car count—a car in and a car out—counting twice; but, as single [95] cars, we would half that and make it about 46,000 cars that were handled at Moncrief.

Q. Approximately how many of these cars came into the Yard from ACL tracks leading into the Yard and that, after reclassification, went out of the Yard over ACL tracks leading out of the Yard?

In other words, they came in as an ACL car and went out as an ACL car. A. Well, out of that 46,000, there was approximately—oh, I would say 35,000 that were Coast Line in and Coast Line out.

[98] *Cross Examination by Mr. Milledge:*

Q. On an average, how many cars are interchanged with FEC each day? ACL and FEC? A. Well, it will vary from month to month.

Some—you know, there is a different flow of traffic for seasons of the year.

If you take a twelve month average, the interchange from the Coast Line to the FEC will be approximately 210 cars from the FEC to the Coast Line. Approximately 210. It is pretty much evened off.

The Court: Two hundred ten over what period of time?

Mr. Milledge: Two hundred ten per day.

The Witness: Per day. By averaging a twelve month period.

The Court: That is each way?

The Witness: Each way, yes, sir.

By Mr. Milledge:

Q. FEC will deliver approximately 210 into H Yard and the ACL will deliver approximately 210 at B Yard to FEC?

A. That is correct.

Q. Now all of the interchange between FEC [99] and ACL takes place on ACL property? A. That is correct.

Q. Now the FEC receives this freight from ACL, Southern, and Seaboard in the Jacksonville area? A. ACL, Southern, and Seaboard. Yes, sir.

Q. Now could you give us an idea, roughly, of how much comes from each road? A. No, sir. I do not have the figures from the Southern and Seaboard. All I have is the Atlantic Coast Line figures.

Q. You are aware, are you not, that the freight received from ACL is in excess of 50 percent of the total freight received by FEC? Fifty percent or slightly over that? A. I just don't know those figures. I haven't checked them out.

Q. All right. In any event, your yearly average is 210 per day each way? A. Each way. That was for the 12 month period ending February, 1967.

Q. Now can you tell us where Seaboard interchanges freight with FEC? A. Seaboard interchanges freight with FEC within the Jacksonville Terminal property.

[100] Q. That is close enough. A. They have got a designation.

Q. TY? A. TY tracks, in the Yard.

Q. In Honeymoon, I believe. Now, how about Southern? Where does it interchange? A. Southern interchanges within the Jacksonville Terminal Company property about that TY or YH Yard, whatever it is. It is on the Jacksonville Terminal Company property.

Q. All right. And the FEC engines run up into the Southern Yards or into the Seaboard Yards? A. FEC engines?

Q. Engines. A. Not into the Southern and Seaboard Yards, no, sir.

Q. All right. The only Yards that FEC engines run into are the Jacksonville Terminal Yards and into the ACL's Moncrief Yard? A. That is correct.

Q. Now does FEC supply any crews that maintain the interchange tracks in Moncrief Yard? A. No, sir.

Q. Who maintains those tracks? [101] A. The Atlantic Coast Line Railroad.

Q. Now where are your main lines in relation to Moncrief Yard? A. The main lines in relation to Moncrief Yard are on what I would describe as the east side, going north; the extreme righthand side.

Q. Do you have—is it two or four main lines that run the whole length there? A. Two.

Q. Two. All right. And, just for instance, at approximately what speed do the main line trains run at through there? A. Well, the speeds—of course we have what we call yard speed, but the main line tracks are completely signaled. They run by signal indication, and then you can govern—run at whatever speed the signals permit, bearing in mind that you have got to stop at a designated place there, to brake down into the Terminal or turn out to go around the Y if you are going around the Y.

Q. Many of the main line movements just go straight on by, don't they? A. That is correct.

Q. If they are southbound, they come on by [102] the Yard and go on down into the Terminal. A. We are talking about passenger trains now.

Q. Passenger trains. A. Yes, sir. The freight trains all go in and out of Moncrief Yard.

Q. Now how long is Moncrief Yard approximately? A. It would be a guess—an estimate—because I don't have any papers here with me to refer to but—wait a minute, I do have—well, this timetable wouldn't give it to me.

I would say approximately two miles.

Q. All right. And over what part of that do the FEC engines run? A. The area that they run, from the south end up to the Yard office, would be roughly a distance of about, I would say, two-thirds of the Yard.

Q. A mile and one-third? A. Something like that.

Q. Now I believe you said that Moncrief Yard—the interchange tracks at least, of Moncrief Yard—were not an integral part of the FEC operation. A. That is correct.

[103] Q. That is what you said. Well, if your crews did not set out and receive interchange in the Moncrief Yard, how would the FEC get the ACL freight? A. Well, the FEC operations, as I refer to "operations," are the operations of its trains and Yards.

Now the interchange is an arrangement between railroads where they swap cars from one railroad to another.

The use of the Moncrief Yard tracks for interchange purposes, on the basis of the present day operations, is a part of the FEC operation.

Q. All right. The use of the interchange tracks of the ACL—that is, the B and H Yards—by FEC is an integral part of FEC's day to day operations.

Is that correct? A. That "integral" kind of confuses me; but it is a part of their normal function.

Q. And if they did not use it everyday they wouldn't get any freight from ACL? A. Not under the basis of the present operating conditions.

Q. All right. And if your Engineers would not put cars into those interchange tracks, FEC would [104] not have any to pick up? A. No, sir. And our Yard would be completely blocked if we couldn't get rid of them.

Q. And if they would not pull them out—if FEC delivers them into the interchange tracks for receipt by ACL—if your employees just left them there—there would be no northbound interchange? A. No, sir, and it would cost the Coast Line a lot of money.

Q. Now you told us a little while ago, I believe, that any slow-down of operation may have long term effect. A. On the loss of business, yes.

Q. All right. And that is because shippers learn about these things pretty fast? A. That is correct.

Q. All right. And if shippers learn that no freight is being interchanged with FEC, is it not reasonable to assume that they will immediately re-route their traffic? A. I can't speak for what the shipper would do.

Q. All right. A. But, unless there was an embargo placed, [105] the Coast Line has no right to refuse traffic from the FEC and no right not to deliver traffic to FEC.

Q. Word of mouth travels pretty fast to shippers? A. That is true.

Q. And I believe you have already told us that if they cannot move it one way they will move it another? A. Yes, sir.

Q. If they cannot move it southbound over FEC they will move it southbound over whatever other line there is avail-

able. A. The industries are going to find a way to move their freight.

Q. And there is another railroad that runs to South Florida, is there not, besides FEC? A. Yes, sir, there is.

[Testimony of J. D. Sims—Direct]

[129]

Q. And are you the Grand Lodge officer assigned to the FEC dispute? A. I am.

Q. Now is the Brotherhood of Locomotive Engineers on strike against the FEC? A. They are.

Q. When did they go on strike? A. March 12, 1967.

Q. Was that what we call a "major dispute" under the Railway Labor Act? A. That is.

[130] Q. That is, a dispute in which one party or the other seeks to change existing contracts? A. That is correct.

Q. And was a Section 6 notice under the Railway Labor Act issued by one side or the other? A. That is correct.

Q. Was that issued by the Florida East Coast? A. That is correct.

Q. And approximately when was that notice issued? A. November 30, 1964.

Q. And in general what did the FEC propose to do? A. The FEC proposed to abrogate the existing contract and substitute, in lieu thereof, a substandard contract, which is commonly referred to on the FEC as a "Yellow Dog."

[131] Q. Was that proposal essentially the same as the conditions of employment imposed by the Florida East Coast in the Fall of 1963? A. Yes, sir.

Q. Now were there negotiations concerning that FEC Section 6 notice? A. Yes, sir.

Q. Did the matter go to the National Mediation Board? A. Yes, sir.

Q. And did the National Mediation Board terminate its services? A. Yes, sir.

Q. And when did it do that? A. February 5, 1967.

Q. And did it do that by some official document? A. By letter, yes.

Q. By a letter to whom? [132] A. To Mr. R. W. Wykoff, Vice President and Director of Personnel, Florida East Coast; and Mr. Perry S. Heath, Grand Chief Engineer, Brotherhood of Locomotive Engineers.

Q. When the National Mediation Board terminated its services did it proffer arbitration to the parties? Compulsory arbitration? A. Yes, sir.

Q. Did the Brotherhood of Locomotive Engineers accept that proffer? A. The Brotherhood did accept it.

Q. Did the Florida East Coast Railroad accept it? A. They refused.

Q. Now did the FEC then, after the 30 days had expired, take action in regard to its Section 6 notice? A. Yes.

Q. Did it abrogate the existing contract and put in its proposal? A. Yes.

Q. When did it do that? A. March 12, 1967.

Q. And when did the Brotherhood of [133] Locomotive Engineers go on strike? A. March 12, 1967.

Q. Was that strike action in response to the FEC's changing the contract? A. It was.

Q. Now, were pickets—B. L. E. pickets—established here in the Jacksonville area after March 12? A. Yes, sir.

Q. About when was that? A. March 12.

Q. March 12, all right.

And where were they placed? A. McQuade Street and Stockton Street.

Q. Now where does the Seaboard Railroad interchange its freight with FEC? A. In the Jacksonville Terminal Company property; and I believe it is known as TY or TH.

Q. Anyway, a Yard within the Jacksonville Terminal Company? A. That is correct.

Q. All right. A. It might be known as Honeymoon. I am confused.

[134] Q. They deliver to one Yard and pick up at another? A. That is correct.

Q. Now were they movements of traffic from the Seaboard Railroad to the FEC picketed at Stockton Street? A. Yes, sir.

Q. And all interchange movements between ACL—~~I~~ mean, between Seaboard and FEC cross Stockton Street? A. That is correct.

Q. And were all of those movements picketed? A. Yes, sir.

Q. And what was the response of the employees of the Seaboard? A. The employees of the Seaboard, when they arrived at the picket line, dismounted from the locomotive; and the supervisory personnel of the Seaboard took charge and completed the interchange.

Mr. Towers: Your Honor, at this time I would like to make a Motion to Strike that answer and object to any further testimony along this line.

[135]

The Court: I fail to see the relevance of it. I sustain the objection.

Mr. Milledge: Your Honor, just for the record might I proffer that the same situation occurred at McQuade Street with regard to the Southern traffic?

The Court: Yes, you can make the proffer.

[136] *By Mr. Milledge:*

Q. At McQuade Street, have you had pickets? A. Yes, sir.

Q. And does Southern interchange cross McQuade Street? A. Yes, sir.

Q. And have the regular employees of Southern honored that picket line and refused to make interchange? A. They have.

Q. Now where is interchange made between ACL and FEC? A. Well, FEC comes into Moncrief and leaves their consist in H Yard, what is known as H, in a designated track.

The ACL handles its consist at this time for the FEC to be in the designated interchange track.

Q. Now do you know, sir, the approximate percentage of FEC interchange that comes from ACL and the approximate percentage of interchange that comes from Southern and the approximate percentage that comes from Seaboard through the Jacksonville gateway? [137]

A. Through discussions with management of the ACL Railroad—in particular, Mr. Mervine, Director of Personnel—Mr. Mervine has stated that the ACL delivers approximately 60 percent of all traffic through the Jacksonville gateway; and that the Southern—

Q. That is, to the FEC? A. To FEC.

Ten percent. And the Seaboard Airline, 30 percent.

That was about the ratio.

Q. Now did you cause the FEC Engineers to be placed with signs at the entrance to Moncrief Yard, starting Sunday? A. Yes.

Q. Now prior to that time have you had discussions with Mr. Mervine, the Director of Personnel of the ACL? A. Yes.

Q. Now, what was the purpose of those pickets, or those men, anyway? A. The FEC striking Engineers were instructed to tell, or request, ACL Engineers to refuse to handle solid blocks of FEC traffic from [138] C Yard to B Yard.

Also to refuse to handle FEC traffic from H Yard that was deposited there by the FEC Railroad.

In the name of common cause.

Q. Now did you have a letter prepared? A. Yes, sir.

Q. And was that given to some or most of the ACL Engineers? A. Some, yes, sir.

Q. Did you have any instructions regarding classification—that is, if an ACL train came down from the north and some of it was for the Seaboard and some for FEC, and some for Southern or whatever—some for local deliveries—were the ACL Engineers requested to classify that or not to classify? A. They were requested to classify it.

Q. In regard to such southbound moves or movements, which moves were they requested not to make? A. After it was classified FEC, not to make that move from the classification to B.

Q. To the delivery yard. A. To the delivery yard of FEC. Correct.

[139] Q. They were requested to make all moves except the last one, to the delivery yard? A. That is correct.

Q. Now, as far as northbound traffic was concerned, that was delivered by FEC into H Yard? A. H Yard.

Q. What moves in regard to that were they requested not to make? A. Not to couple into it and handle it.

Q. Now, as far as you know, did the ACL Engineers whose jobs have included either one of those two moves, have they abided by that request? A. As far as I know, yes, sir.

Q. What was the purpose of asking the ACL Engineers—that is, what traffic were you trying to stop by this? A. Only the FEC.

Q. And in your discussions with Mr. Mervine, the Director of Personnel, have you discussed that? A. Yes.

Q. And have you made it clear to him that that was what you had in mind? A. Yes, sir.

Q. Have there been any threats or coercion [140] toward any ACL Engineers? A. No, sir.

Q. In addition to the picket signs and to the letter—that I believe is Exhibit 1 or Exhibit A of the plaintiff—have you talked to the ACL Engineers individually? A. Most of them.

[Argument of Mr. Milledge]

{169}

The Court: You are basing your case solely on the Norris-LaGuardia Act?

Mr. Milledge: Right. I think at this point of the argument, since Norris-LaGuardia is clearly in point here.

UNITED STATES DISTRICT COURT**MIDDLE DISTRICT OF FLORIDA****JACKSONVILLE DIVISION****No. 67-335-Civ-J**

**ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,*****Plaintiff,*****—v.—****BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; et al.,*****Defendants.***

**Order Denying Application for Temporary
Injunctive Relief****(Filed April 26, 1967)**

This cause came on to be heard on April 25, 1967, upon the plaintiff's application for temporary injunctive relief against defendants. Upon evidence introduced by plaintiff and defendants, and upon arguments by respective counsel, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The plaintiff, Atlantic Coast Line Railroad Company (ACL), is an interstate railroad company, subject to the

Interstate Commerce Act, 49 U.S.C. § 1, et seq., and the Railway Labor Act, 45 U.S.C. § 151, et seq.

2. The defendant, Brotherhood of Locomotive Engineers (BLE), is a labor organization under the Railway Labor Act which represents the craft of locomotive engineers employed on many railroads including the plaintiff, ACL, and the Florida East Coast Railway Company (FEC). The individual defendants are officers or members of BLE.

3. In 1964 FEC issued to BLE a proposal under Section 6 of the Railway Labor Act, 45 U.S.C. § 156, to change the rules, rates of pay and working conditions of FEC engineers. This proposal was processed under the procedures of the Railway Labor Act. In February, 1967, the National Mediation Board proffered arbitration to FEC and to BLE. BLE accepted arbitration of the dispute and FEC declined. The procedures of the Railway Labor Act having been exhausted, on March 13, 1967, FEC unilaterally put into effect the proposed contract revisions for engineers, and BLE called a strike against FEC.

4. At its northern terminus in Jacksonville, Florida, FEC interchanges freight traffic with ACL, Seaboard Air Line Railroad Company and Southern Railroad Company. This interchange is made with Seaboard and Southern upon the premises of the Jacksonville Terminal Company. Interchange between FEC and ACL is performed in the Moncrief Yard facility of ACL. FEC trains operated by striker replacement crews daily enter and operate in this ACL yard for the purpose of delivering and receiving interchange traffic. This interchange traffic averages 420 cars per day or over 150,000 cars per year. The interchange of

freight with ACL constitutes approximately 60% of all freight received and delivered by FEC at its northern terminus.

5. The use of ACL's Moncrief Yard by FEC to receive and deliver freight is an integral and necessary part of FEC's operations.

6. Commencing on Sunday, April 23, 1967, BLE caused pickets to be placed at the employee entrance to Moncrief Yard. These pickets, by signs and pamphlets, requested the ACL employees to refuse to handle interchange traffic to and from FEC. Since the picketing commenced ACL engineers have refused to deliver freight to those tracks in Moncrief Yard designated for delivery to FEC, and have refused to receive freight from those tracks where FEC trains and crews have placed freight for delivery to ACL.

7. The effect of this picketing will be to deprive FEC of freight traffic to and from ACL. In addition, it will cause severe congestion of ACL's Moncrief Yard.

CONCLUSIONS OF LAW

1. This suit arises under the Railway Labor Act, 45 U.S.C. § 151 et seq., and the Interstate Commerce Act, 49 U.S.C. § 1, et seq. This Court has jurisdiction of the case under 28 U.S.C. § 1337.

2. The Interstate Commerce Act regulates the relationships among interstate railroad carriers and between such carriers and the public. The Railway Labor Act regulates the relationships between railroad carriers and railroad employees.

3. The parties to the BLE-FEC "major dispute" having exhausted the procedures of the Railway Labor Act, 45 U.S.C. § 151, et seq., are now free to engage in self-help. *Brotherhood of Locomotive Engineers v. Baltimore & O.R.R.*, 372 U.S. 284 (1963).

4. The conduct of the FEC pickets and that of the responding ACL employees are a part of the FEC-BLE major dispute. *Brotherhood of Locomotive Firemen and Enginemen v. Florida East Coast Ry.*, 346 F. 2d 673 (5th Cir. 1965).

5. The conduct of the ACL employees creates neither a major nor a minor dispute with ACL. See *Chicago & Illinois Midland Ry. v. Brotherhood of R.R. Trainmen*, 315 F. 2d 771, 776 (7th Cir. 1963) (Swygert, J., dissenting).

6. The "economic self-interest" of the picketing union in putting a stop to the interchange services daily performed within the premises of plaintiff's yard facilities, and in the normal, day-to-day operation of FEC trains operating with strike replacement crews within these facilities is present here. The "economic self-interest" of the responding employees in refusing to handle this interchange and in making common cause with the striking FEC engineers is similarly present. *Brotherhood of R.R. Trainmen v. Atlantic Coast Line R.R.*, 362 F. 2d 649 (5th Cir.), *aff'd*, 385 U.S. 20 (1966).

7. The Norris-LaGuardia Act, 29 U.S.C. § 101, and the Clayton Act, 29 U.S.C. § 52, are applicable to the conduct of the defendants here involved. See *Brotherhood of Locomotive Firemen and Enginemen v. Florida East Coast Ry.*,

346 F. 2d 673 (5th Cir. 1965); *Brotherhood of R.R. Trainmen v. Atlantic Coast Line Railroad*, 362 F. 2d 649 (5th Cir.), *aff'd*, 385 U.S. 20 (1966).

Upon consideration, it is

ORDERED that plaintiff's application for temporary injunctive relief is denied.

DONE AND ORDERED at Jacksonville, Florida, this 26th day of April, 1967.

WM. A. McRAE, JR.
Judge

Copies to counsel

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

Case No. 67-338-Civ-J

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood, and G. Q. RUTLAND, individually and as a member of said Brotherhood,

Petitioners,

vs.

**ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,**

Respondent.

Petition for Removal

(Filed April 27, 1967)

*To the Judges of the United States District Court for the
Middle District of Florida:*

The Petition of Petitioners, Brotherhood of Locomotive Engineers; Local Lodge Division 823 of the Brotherhood of Locomotive Engineers; J. E. Eason; J. D. Sims; H. M.

Sawyer; W. K. Morris and G. Q. Rutland, respectfully shows:

1. On the 27th day of April, 1967, an action was commenced against Petitioners in the Circuit Court, in and for the Fourth Judicial Circuit of Florida, styled Atlantic Coast Line Railroad Company, a corporation, Plaintiff, vs. Brotherhood of Locomotive Engineers, et al., Defendants, by service upon Petitioners of a Complaint, a copy of which is attached hereto. True copies of all matters filed in said cause are attached hereto.

2. The above described action is a civil action of which this Court has original jurisdiction under the provisions of 28 USCA, Section 1337, and is one which may be removed to this Court by Petitioner, pursuant to 28 USCA, Section 1441, in that it appears from the Complaint that this is a civil action arising under one or more of the following Acts of Congress regulating Commerce:

Interstate Commerce Act, 49 U.S.C. @ 1 et seq.;
 Railway Labor Act, 45 U.S.C. @ 151 et seq.;
 and the First Amendment, United States Constitution.

3. Petitioner files herewith a bond with good and sufficient surety conditioned, as provided by Title 28, United States Code, Section 1446(d), that it will pay all costs and disbursements incurred by reason of the removal proceedings hereby brought should it be determined that this action is not removable or is improperly removed.

WHEREFORE, Petitioner prays that the above action now pending against him in the Circuit Court of the Fourth

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
No. 67-338-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Plaintiff,

—VS.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood, and G. Q. RUTLAND, individually and as a member of said Brotherhood,

Defendants.

Motion to Remand Action to State Court

(Filed April 27, 1967)

Plaintiff, Atlantic Coast Line Railroad Company, moves for the entry of an Order remanding this action to the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, from which it was improperly removed, and plaintiff states the following grounds for its motion:

1. Removal of this action is improper under 28 U.S.C., Section 1441.

2. Plaintiff's action is not one of which this Court has original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States.

3. Plaintiff's action is not one of which this Court has original jurisdiction under 28 U.S.C., Sections 1331 and 1337, or under any law of the United States regulating trade or commerce.

ROGERS, TOWERS, BAILEY, JONES & GAY

C. D. TOWERS, JR.

1300 Florida Title Building

Jacksonville, Florida 32202

Attorneys for Plaintiff

[Certificate of Service omitted in printing]

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-338-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY,

a corporation,

Plaintiff,

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS;
et al.,

*Defendants.***Order**

(Filed April 27, 1967)

After due notice, a hearing was held this day on Plaintiff's Motion to Remand. The Court has considered the arguments of counsel for the respective parties and is of the opinion that this case was improvidently removed to this Court. 1A Moore's Federal Practice Para. 0.167(7) (2nd ed. 1965).

Upon consideration, it is ORDERED that Plaintiff's Motion to Remand is granted and this cause is hereby remanded to the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida; and that a certified copy of this order be mailed by the Clerk of this Court to the Clerk of said Circuit Court.

DONE AND ORDERED at Jacksonville, Florida, this 27th day of April, 1967.

/s/ WM. A. McRAE, JR.

Judge

CIRCUIT COURT OF DUVAL COUNTY, FLORIDA

Civil Action No. 67-3536

Division E

ATLANTIC COAST LINE RAILROAD COMPANY, ETC.,

Plaintiff(s),

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; et al.,

Defendant(s).

Summons

THE STATE OF FLORIDA:

To all and singular the sheriffs of said State:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the complaint or petition in the above styled cause upon the defendant(s) W. K. Morris, individually and as a member of the Brotherhood of Locomotive Engineers.

Each defendant is hereby required to serve written defenses to said complaint or petition on plaintiff's attorney, whose name and address is Rogers, Towers, Bailey, Jones & Gay, 1300 Florida Title Building, Jacksonville, Florida 32202 within 20 days after service of this summons upon that defendant, exclusive of the day of service, and to file the original of said written defenses with the clerk of said court either before service on plaintiff's attorney or imme-

diately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

Witness my hand and the seal of said Court on May 5, 1967.

S. MORGAN SLAUGHTER
As Clerk of said Court

By: BETTY R. THOMPSON
As Deputy Clerk

[Other summonses omitted in printing]

IN THE
CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

No. 67-3536

Division E

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood, and G. Q. RUTLAND, individually and as a member of said Brotherhood,

Defendants.

Complaint

(Filed April 27, 1967)

Atlantic Coast Line Railroad Company, a corporation, (hereinafter "ACL") as plaintiff, sues Brotherhood of Locomotive Engineers, an unincorporated labor association, (hereinafter "BLE"), individually and as representative of its membership; Local Lodge Division 823 of the BLE for the Florida East Coast Railway Company; J. D.

Sims, individually and as Assistant Grand Chief Engineer of the BLE; J. E. Eason, individually and as Local Chairman of the BLE for the FEC; and H. M. Sawyer, W. K. Morris and G. Q. Rutland, individually and as members, agents and representatives of the BLE and of the Local Lodge of the BLE for the FEC, as defendants, and alleges:

1. Plaintiff is a corporation organized and existing under the laws of the State of Virginia with its principal place of business in Jacksonville, Duval County, Florida, and is authorized and qualified to do business in the State of Florida. Plaintiff is a railroad common carrier subject to the provisions of the Florida Transportation Act, Chapter 350, Florida Statutes, and is engaged in the operation of a railroad system in this state carrying passengers, freight and express lading for hire. Plaintiff, as a common carrier, serves numerous communities within the State of Florida in addition to the City of Jacksonville and County of Duval and provides extensive passenger, mail, freight, including perishable freight, and express lading service to these communities. In the course of its operations, plaintiff serves numerous industries and plants in the State of Florida and supplies and materials vital for their existence. Plaintiff is further obligated under the aforesaid Florida Transportation Act to provide and does provide interchange service with various connecting railroad common carriers, including FEC, Seaboard Air Line Railroad Company and Southern Railway System.

2. Defendant BLE is an unincorporated labor organization with its principal offices in Cleveland, Ohio, but with local lodges located in the State of Florida. Local Lodge Division 823 is the local lodge of BLE for members who are employees of the FEC residing in northeast Florida, and is located in New Smyrna, Florida. Defendant J. D.

Sims currently at all times material hereto has held the national office in the BLE designated as Assistant Grand Chief Engineer whereby he was and is charged with the responsibility of promoting, inducing and coordinating the acts hereinafter alleged. Defendant Sims, individually and in his official capacity as said national officer, did in fact promote, induce, and coordinate the acts hereinafter alleged. Defendant, J. E. Eason, is a resident and citizen of the County of Volusia, State of Florida and is the local chairman for BLE members employed by FEC in the State of Florida and individually and in said official capacity as local chairman has also promoted, induced and coordinated the acts hereinafter alleged and assisted the BLE and defendant Sims in promoting, inducing and coordinating such actions. Defendants H. M. Sawyer, W. K. Morris and G. Q. Rutland, as members, representatives and agents of BLE and Local Lodge Division 823 of the BLE, have picketed, displayed pamphlets and induced plaintiff's employees to cease work as hereinafter alleged. The other members of the BLE and Local Lodge Division 823 are so numerous as to make it impractical to bring them all before the Court individually. None of the individual defendants is an employee of ACL.

3. This action arises under the Constitution and laws of the State of Florida, including without limitation the Declaration of Rights of the Florida Constitution; the Florida Restraint of Trade Laws, Chapter 542, Florida Statutes; the Florida Transportation Act, Chapter 350, Florida Statutes; and the Florida Labor Laws, Chapter 447, Florida Statutes.

4. At all times material hereto there has existed a collective bargaining agreement between ACL and its employees represented by BLE, which agreement is presently

in full force and effect. There is no dispute under said agreement within the meaning of the Railway Labor Act (45 U.S.C., Section 151, et seq.) between the plaintiff and either the members of the BLE or the individual defendants named herein, between the plaintiff and any of its employees or between plaintiff and the employees of any other railroad common carrier which gives rise to the acts herein-after alleged.

5. The FEC is a corporation organized under the laws of the State of Florida and is an intrastate railroad common carrier shipping various goods and commodities in interstate commerce and receiving various goods and commodities from various railroad common carriers, including the ACL. The FEC has been involved in labor disputes with various railroad labor organizations representing the FEC employees since the year 1963. The defendant labor union has been on strike against FEC since March 12, 1967. That strike has not been resolved.

6. On April 24, 1966, certain operating unions, the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen and the Brotherhood of Locomotive Firemen and Enginemen, struck the FEC. On May 4, 1966, these organizations established picket lines at various employee entrances to the Jacksonville Terminal Company, a terminal facility used by ACL, FEC and other railroads servicing northeast Florida. Jacksonville Terminal Company filed suit in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, Division B, Case No. 66-2941-E, praying for injunctive relief against the aforesaid picketing of its employee entrances. A temporary injunction was entered by the Honorable Roger J. Waybright on May 30, 1966, enjoining said picketing and

after receiving oral and documentary evidence and briefs of counsel, a final decree enjoining said picketing was entered on July 29, 1966, and a subsequent Suggestion for Writ of Prohibition to the First District Court of Appeal of Florida was denied. The facts existing in the action filed by Jacksonville Terminal Company are less severe than the facts existing here.

7. ACL has various lines coming into and going out of the City of Jacksonville, Duval County, Florida, including main lines through which service is provided to various destinations north and west of said County and including main lines destined to Tampa, Florida, serving points between Tampa and said County. The property and lines of FEC end at a point just to the north of the St. Johns River and to the south of the Jacksonville Terminal Company, the northeast Florida terminal facility for various user railroads. The rail lines of ACL in Duval County in no way adjoin or are directly connected to the rail lines or property of FEC. FEC does not own any part of the stock of ACL and does not in any way control the operation or management of ACL. ACL operations are in no way integrated into the operations of the FEC and ACL furnishes to FEC no switching, or other interchange service to FEC other than simple transfer of property rights in and responsibility for railroad cars to and from FEC. ACL furnishes no minor repairs or maintenance on FEC cars or locomotives. ACL provides no signaling or switching service for FEC in Moncrief Yard or elsewhere. ACL furnishes to FEC no goods, facilities, or services which are an integral part of the day-to-day operations of FEC.

8. On Sunday, the 23rd day of April, 1967, without notice, the BLE by and through its members, including defendants J. D. Sims, J. E. Eason, H. M. Sawyer, W. K.

Morris and G. Q. Rutland, proceeded to display picket signs and patrol at employee entrances to the property and interchange yard exclusively owned by ACL and known as Moncrief Yard and to disburse letter-notices or pamphlets to ACL employees going to work through said entrances. A sample of said letter-notices is attached hereto as Exhibit A. The express and manifest intent of the BLE in distributing the aforesaid notices and in displaying said picket signs was to induce and coerce the employees of ACL in Moncrief Yard to refuse to handle, move or carry out their regularly assigned duties with respect to any ACL railroad car arriving in Moncrief Yard from the FEC or arriving in Moncrief Yard destined to the FEC. Defendants also sought and now seek to induce and coerce plaintiff to combine with them to embargo or refuse interchange with the FEC in violation of Florida law. The intent and purpose of this picketing and distribution of letter-notices was not to advertise or lawfully advise either the public in general or the employees of the ACL of the BLE labor dispute with FEC but, rather, was to accomplish various purposes hereinafter alleged which are in violation of the law of the State of Florida.

9. As a direct result of the inducement and coercion by the BLE through picketing of the aforesaid employee entrances and through the distribution of the aforesaid pamphlets, employees of ACL in Moncrief Yard have refused to handle, move or interchange any ACL railroad car on ACL property arriving from or destined to the FEC which has had and threatens to continue to have the following results:

- (a) Total disruption of the interchange operations of ACL in Moncrief Yard which are necessary for operation of plaintiff's business;

(b) Effective blockade of railroad cars destined to points within the County of Duval and throughout the State of Florida and the United States;

(c) Stoppage of cars carrying citrus and other perishable goods, United States mail, military traffic, express lading, and other strategic materials;

(d) Inability to serve properly shippers within and without the County of Duval due to the necessity of using supervisory personnel from other points on ACL to operate Moncrief Yard and due to interference with traffic patterns and schedules; inability to comply with the terms of existing contracts for the shipment of goods, commodities and other freight;

(e) Complete disruption of interchange of freight between ACL and other connecting railroad common carriers, including Jacksonville Terminal Company, Seaboard Air Line Railroad Company, Southern Railway System and FEC;

(f) Substantial loss of profits and revenues by diversion of traffic and loss of traffic to other railroads by shippers within and without the County of Duval to a degree which cannot now be determined but which will be determinable in the future, and which threatens job standards and job security of ACL employees.

10. The object and purpose of the aforesaid picketing and distribution of pamphlets by defendants was and is as follows:

(a) Induce and coerce ACL and the employees of ACL to violate the law of the State of Florida by refusing to provide interchange service to the FEC;

(b) Induce and coerce the ACL through its employees to place an illegal embargo on traffic arriving from or destined to the FEC;

(c) Induce and coerce the ACL to engage with defendant BLE in a combination for the purpose of restricting the pursuit of business by FEC and preventing competition in the transportation of merchandise, produce and commodities by the FEC;

(d) Divert rail traffic from the FEC to other railroad common carriers and apply illegal economic pressure and coercion on the ACL.

11. The aforesaid picketing and distribution of pamphlets by the defendants in the absence of any labor dispute between ACL and its employees is illegal under the law of the State of Florida and is designed to accomplish illegal purposes in that:

(a) The defendants' acts constitute coercive pressure on the ACL and its employees which is unlawful and contrary to the established public policy of the State of Florida;

(b) The picketing is outside the area of the struck industry, the FEC, in violation of the aforesaid Florida Labor Law and is in the nature of an illegal secondary boycott;

(c) The defendants seek to force plaintiff to violate its statutory duty under the aforesaid Florida Transportation Act to provide service to its various shippers and to provide interchange service to the FEC and to embargo FEC not only in violation of the Florida Transportation Act but also in violation of the aforesaid Florida Restraint of Trade Laws;

(d) The inducements and coercions of defendants constitute a tortious interference with the contractual relationship between ACL and its employees and between ACL and its various shippers;

(e) Said inducements and coercions of defendants constitute an unwarranted and unconstitutional interference with the business of the ACL and constitute a tortious interference with the prospective business advantage of the ACL;

(f) Said actions of defendants constitute a breach of the peace;

(g) Said actions are for the purpose of restraining trade in violation of Florida law.

(h) Said actions will deprive plaintiff of its property without due process of law in violation of the Constitution and laws of the State of Florida.

12. This court has jurisdiction of the subject matter and of the parties and is the only forum that can grant relief to plaintiff. Plaintiff is without an adequate remedy at law. Unless the picketing and distribution of pamphlets by defendants is restrained and enjoined by this court, plaintiff will suffer irreparable harm and numerous individuals and industries which are like ACL, an innocent third-party to the FEC-BLE labor dispute, will likewise suffer irreparable harm. Far greater injury will be inflicted upon the citizens of Duval County and the entire State of Florida, the employees of ACL and upon ACL by denial of the relief sought herein than will result to the defendants by granting such relief.

WHEREFORE, plaintiff respectfully prays:

A. That this court issue a preliminary injunction made permanent on final hearing pending hearing and determination of plaintiff's application for permanent injunction on the grounds that immediate and irreparable damage will result before notice can be served and a hearing had on said application for permanent injunction.

B. That the preliminary injunction and permanent injunction enjoin and restrain the defendants BLE and Local Lodge Division 823 of the BLE, individually and through their officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with them, the individual defendants J. D. Sims, H. M. Sawyer, W. K. Morris and G. Q. Rutland, and all persons receiving notice of any such orders of this court from:

(1) Ordering, directing, authorizing, recommending, sanctioning, starting, continuing, permitting, encouraging, or participating in the picketing, patrolling or blockading of the premises or railroad trackage of the plaintiff including entrances to plaintiff's property used by employees of plaintiff, or the interference with or interruption of and of the railroad trackage of plaintiff, or the interference with or interruption of and of the rail traffic movements of the plaintiff;

(2) Causing, compelling or inducing the employees of the plaintiff to cease or temporarily desist from the full performance of their duties with the plaintiff;

(3) Interfering with employees of the plaintiff in the full performance of their respective duties or work with the plaintiff by the imposition of fines against said employees, or otherwise, or by paying any benefit

and giving any money or any thing of value, or of making any promises or inducement whatsoever to any employee of the plaintiff who refuses to obey a lawful order or orders to perform services, duties, or work for the plaintiff in connection with his normal and usual employment with the plaintiff, or supporting in any way any employee of the plaintiff who refuses to obey a lawful order or request by the plaintiff to perform such work, duty or service;

(4) Interfering with the operations of the plaintiff or with the employees, agents and servants of the plaintiff by any of the above described acts or by any force, intimidation, violence or threat thereof.

Plaintiff further prays:

(5) That the defendant labor organizations, their appropriate officers, agents, servants and employees and the other defendants herein be directed and mandatorily enjoined to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendants' officers, agents, attorneys, or members, asking any of plaintiff's employees not to render service in connection with the operation of the plaintiff.

(6) That plaintiff be granted such other and further relief as the case may require and as the Court shall deem proper.

C. That a day certain be fixed upon which defendants are required to show cause, if any they have, why they should not be permanently enjoined from committing the acts hereinabove complained of.

D. That a copy of this complaint and the temporary injunction herein prayed for be served on the defendants in person.

E. That upon a final hearing of this cause the defendants be permanently enjoined from committing the acts hereinabove complained of.

F. That the plaintiff have such other or further relief as to this court may seem proper and just.

ROGERS, TOWERS, BAILEY, JONES & GAY

by /s/ C. D. TOWERS JR.
1300 Florida Title Building
Jacksonville, Florida 32202
Attorneys for Plaintiff

[Verified by L. T. Andrews, General Manager of
plaintiff corporation, on April 27, 1967.]

EXHIBIT A ANNEXED TO COMPLAINT

(Letterhead of Brotherhood of Locomotive Engineers,
Cleveland, Ohio 44114)

April 23, 1967

To All ACL Employees
Jacksonville, Florida

Dear Sirs and Brothers:

The FEC's striking engineers are clearly engaged in a major dispute (under the Railway Labor Act) against the FEC, we have the right to appeal to the employees of the ACL for help, to make common cause with us by refusing to handle FEC freight.

The FEC and its SCABS with the assistance rendered by the ACL are causing our engineers to suffer loss of all contract rights. We appeal to you to make common cause with us in this fight for our jobs. No freight from ACL means no money for FEC and its SCABS. **HELP US.**

Yours fraternally,

/s/ J. D. Sims

J. D. Sims

Assistant Grand Chief Engineer

Brotherhood of Locomotive Engineers

**Extracts from Transcript of Proceedings before
Honorable Charles A. Luckie, Circuit Judge**

**IN THE
CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA
DIVISION E
Civil Action Case No. 67-3536**

**ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,**

Plaintiff,

VS.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, etc., et al.,

Defendants.

TESTIMONY AND PROCEEDINGS before the Honorable Charles A. Luckie, Circuit Judge, in Chambers, at the Duval County Courthouse, Jacksonville, Florida, on Monday, May 1, 1967, as recorded by Harris S. Coffee, Special Assistant Official Court Reporter:

Appearances:

DAVID M. FOSTER, Esquire, FRANK X. FRIEDMANN, JR., Esquire, ROBERT S. SMITH, Esquire, and C. D. TOWERS, JR., Esquire, of the law firm of Rogers, Towers, Bailey, Jones & Gay, attorneys for plaintiff.

ALLAN MILLEDGE, Esquire, of the law firm of Milledge & Horn, attorneys for defendants.

[2]

PROCEEDINGS

MARSHALL C. JENNETTE, having been produced and first duly sworn as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Foster:

Q. State your name, Mr. Jennette. A. Marshall C. Jennette.

Q. Your business or profession, please? A. I am general superintendent of terminals for Atlantic Coast Line Railroad.

Q. Are you employed in any connection, Mr. Jennette, with respect to the operation of Moncrief Yard here in Duval County? A. Yes, sir.

Q. Is that an Atlantic Coast Line Company facility? A. Yes, sir. It's our classification yard in Jacksonville.

Q. Now, Mr. Jennette, did picketing and related activity occur at Moncrief Yard? A. Yes, sir.

Q. And had there been any picketing at Moncrief Yard prior to Sunday, April 23? [3] A. Well, they had been picketing at the south end, McQuade Street only.

Q. Was there any picketing at any of the entrances prior to Sunday, April 23rd? A. No, sir, there were not.

Q. Prior to that time were the operations of the yard going along smoothly? A. Yes, sir; everything was normal.

Q. Were employees performing all of their duties prior to April the 23rd? A. Yes, sir, they were.

Q. Now, if you will, Mr. Jennette, tell the Court when the picketing and related activities began. A. I got a call about 3:00 o'clock Sunday afternoon, April the 23rd that some East Coast engineers were at the entrance to the road

leading into Moncrief Yard displaying some signs and I immediately went out there, got there a little after 3:00 and I understood the signs were put up and the people came in around 2:15 Sunday afternoon, the 23rd.

Q. Were there some picketing signs when you arrived that Sunday afternoon? A. Yes. There were three or four signs being displayed and there were six men there from the Florida East Coast Railroad.

[5] A. Well, I asked the gentlemen if they'd mind if I wrote down what was on the signs. They turned one around face to me, two feet wide, three feet tall. The top of the sign had large letters with the word "Unfair" on it in red, approximately six-inch-high letters. The other letters were in black a little smaller. It said "ACL is helping the FEC scabs destroy our jobs. Do not handle FEC freight," and these signs didn't have any signature of any type on them as to who they represented.

[6] *By Mr. Foster:*

Q. Now, Mr. Jennette, in addition to the signs which you have just described, was any other activity going on there at the employee entrance to Moncrief Yard when you arrived on Sunday afternoon? A. Right many of the cars stopped, and when the cars stopped these gentlemen would go over, ask them—hold up the signs where they could read it. They had a piece of paper, letter they offered some of them to read. Some of them took it and read it and some didn't.

Q. Did Mr. Sims show you a copy of what the letter was and piece of paper? A. I asked about Mr. Sims. They said he had gone, been there 3:00 o'clock, and I went back, I think I got there sometime after 5:00 o'clock and I asked

him if I might—I don't believe—let's see. I don't believe Mr. Sims got there until maybe 10:00 o'clock that night.

Q. Some time that day did Mr. Sims— A. Later on I said to these gentlemen around 5:00 o'clock after all the switch crews had gone to work, it seems these were the ones they wanted to stop and they dispersed and left sometime after 5:00 o'clock and I believe that Mr. Sims was out there and I asked if I might have a copy of the letter they were handing out. He said, "I don't see any reason you shouldn't have a copy," so he gave [7] me a copy.

Q. Let me ask you to look at this piece of paper, Mr. Jennette. Tell me whether that is a copy of the letter Mr. Sims showed to you that the pickets were showing to the ACL employees as they were coming into the yard. A. The copy he gave me was a mimeographed copy on Brotherhood of Locomotive Engineers stationery, and this appears to be a Xeroxed copy of the same letter.

Mr. Foster: We will ask that that be admitted as Plaintiff's Exhibit 3.

Mr. Milledge: No objection.

The Court: Received as Plaintiff's 3.

(The instrument last above referred to was received in evidence as Plaintiff's Exhibit No. 3.)

By Mr. Foster:

Q. Now, Mr. Jennette, would you describe for me, please, the street or roadway where these activities were going on insofar as their proximity to Moncrief Yard is concerned?

A. Well, as you go out McDuff Avenue it makes a turn near the dog tracks and runs into Fifth Street. That is the end of McDuff and the beginning of Fifth and right at that curve there's this unnamed road leading into Mon-

crief Yard and this picketing was taking place two or [8] three hundred feet off of—down this road off of McDuff and approximately a hundred feet before you reach the southern railroad track.

Q. Now, Mr. Jennette, do the vast majority of ACL employees who work at Moncrief Yard enter Moncrief Yard along this road? A. This is the only road entrance to Moncrief Yard.

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[9]

Q. After this picketing and handing out of the letter occurred, was there any change in the manner in which the employees of Moncrief Yard went about carrying out their duties? A. There definitely was.

Q. How would you characterize the change? A. The first incident happened right after [10] midnight Sunday night. One of the engineers stated he didn't want to switch any cars. After we talked to him he went ahead and worked his tour of duty Sunday night. Monday night the same engineer, Mr. R. J. Starling, on Job 17, he went on duty 11:30 P.M. the 24th, and 12:04 A.M. he got off his engine with his handbag. I went out to see why the engine had stopped and we called to him to stop, which he did, and he said he had worked the night before and he wasn't going to handle any FEC cars and, of course, they were stopped all over the yard, and so he walked off the job, and we told him if he walked off he'd be relieved.

Q. All right, sir. Were there any other instances after Mr. Starling during last week in which employees of ACL refused to perform some of their duties at Moncrief Yard? A. In many ways. We called a Mr. M. L. Adams to work Mr. Starling's job after he refused to work. Mr. Adams accepted the call and came to the yard office, and before

he got to the yard office he had a call to call Mr. Shirley, his local chairman.

When he got there he went to use the telephone. When he came out he said he couldn't switch any cars. He left the property without ever getting on the engine or reporting on the job.

[11] Q. All right, sir. Could you tell me how many different train crews or parts of train crews there would be only one man in the particular crew who would refuse to work, who did refuse to do some of their duties there at Moncrief Yard beginning last week beginning with Mr. Starling right on down through Friday? A. It involved 15 switch crews, one road crew and a total of 32 men.

Q. Were these men employed in various crafts? A. They were employed all in the Transportation Department.

Q. What crafts were they members of? A. Engineers, conductors, firemen and switchmen.

Q. Engineers, conductors, firemen and switchmen? A. That's right.

Q. 32 men altogether? A. Yes, sir.

[13]

Q. Mr. Jennette, if you will continue, and if you need to use these notes, you may do so, beginning with Engineer Brown at 11:00 P.M. on April the 25th, I believe it was or 24th, who refused to work. Go on down and tell the Court the names of the individuals involved and the times that the incidents occurred wherein ACL employees refused to work. A. Well, on Job Number 46, Engineer C. E. Brown on duty at 11:00 P.M. on the 24th came into the office where I was and Mr. Brown was right ahead of him—along with his conductor and his two switchmen and stated that he could no longer switch cars on the yard involving—

[14] Q. Mr. Jennette, just confine yourself to the kind of work they refused to do, who they were and when it happened, without getting into what they said. Do you understand? A. Well, Mr. Brown refused to handle cars that were destined to FEC or coming from FEC and Mr. Wright told him—I told him I'd have to relieve him. You want me to go any further than that?

Q. That's fine. Go to Mr. Black. A. Job 23, on duty at 11:30 P.M. on the 24th; refused to switch cars from C Yard to B Yard.

Now, this is where the cars after they are classified, placed in B Yard for FEC crews to pick up which completes the interchange.

Q. That was Engineer Black? A. Engineer Black.

Q. All right, sir. What was the next incident? A. Job Number 14 on the 25th.

Q. That is the 25th of April? A. The 25th of April, on duty 7:30 A.M.

Q. Who was on duty at that time? A. I was, along with Mr. Wright.

Q. Who refused to work? A. Mr. Black refused to.

Q. We are through with Mr. Black. Let's move on. [15] A. His fireman, J. R. Matthews got off the engine at the time Mr. Baker got off.

Q. What job did Mr. Baker hold? A. Engineer to that switch engine.

Q. When did that occur? A. He was relieved at 7:55 A.M. on the 25th.

Q. What kind of work did those men refuse to do? A. Well, he just refused to handle any cars on the yard, cars to or from Florida East Coast Railroad.

Q. What was the next incident? A. Job Number 24 on the 25th, Engineer Griffin. He called in, asked to be re-

lieved stating that he could not handle any cars to or from Florida East Coast Railroad. He was relieved at 4:10 P.M.

Q. Tell me about the next incident. A. Job Number 40 on the 25th. Engineer Rogers called for relief at 4:13 P.M.

Q. How about the next one? A. Job Number 17, E. L. Swan, engineer on duty 11:30 P.M. on the 25th.

Q. What kind of work did that man refuse to do? A. He refused to switch cars that were delivered to ACL by the Florida East Coast Railroad.

Q. What about the next? A. Job 23 on the 26th, Engineer W. T. Lott [16] refused to move cars from 17-C Yard down to B Yard and was relieved at 5:35 A.M. on the 26th.

Q. What about the next one? A. Job 16, Engineer J. M. Kennard. He refused to couple up to a cut of cars, couple up to the Atlantic Coast Line cars from the FEC, and he was relieved at 10:45 A.M.

Q. What type of cars were they? A. A solid cut of cars from the Florida East Coast Railroad to the Atlantic Coast Line Railroad.

Q. Consisting of what? A. Consisting of loads and empties of various types of commodities.

Q. Do you know what was in the cars? A. No, I don't have a consist of the cars.

Q. All right, sir. How about the next incident? A. Job Number 24 on the 26th, Mr. R. F. Wynn on duty 3:30 P.M. refused to switch perishable cars from the Florida East Coast Railroad and was relieved at 4:30 P.M.

Q. How about the next incident? A. Job Number 16, J. H. Stalvey, on duty 11:50 P.M. on the 26th refused to switch FEC cars, was relieved at 4:45 P.M. on that same date.

Job Number 6, Conductor J. R. Cannon—and this is the first instance where the whole crew came out.

[17] Q. Who were the other members of the crew Mr. Cannon was on? A. Mr. Cannon was the conductor and the switchmen were A. W. Roundtree and Switchman L. Carter.

Q. Who was the engineer to that particular crew? A. The engineer, road foreman-engineer was supervisory put on the engine because we didn't have any engineers to report for the job and the extra board had been depleted.

Q. Did those men refuse to work? A. They refused to move cars from Track C-12, that is in C Yard down to B Yard for the Florida East Coast and they were relieved at 1:00 A.M.

Q. What is the next incident, sir? A. Job Number 6. That is the same job, though. Engineer Shanks was the engineer to that same crew—excuse me. I was wrong about that being a supervisor. We had an instance of that kind. That was later on, but this was his full crew where the engineer and all the trainmen refused to handle all these cars and the engineer on that job was M. H. Shanks.

Q. What is the next—that is the next incident, Job Number 23? A. 23 on the 27th. Conductor R. P. Walker, Switchman Brown, Switchman Epps refused to handle cars from [18] C-17 to B Yard to be delivered for the Florida East Coast Railroad.

Q. All right, sir. What is the next incident? A. Job Number 12 on the 27th. Conductor O. G. Green on duty at 11:30 P.M. refused to switch cars which were left on the—what we refer to as the 20 lead to be switched. When he got down to the three cars that come over from the Florida East Coast Railroad, then he refused to couple to them and he stood aside and the supervisory crew moved those three cars and they worked on until 5:00 A.M. when they refused to switch cars on a train that came in from the north that had some Florida East Coast cars near the cab.

They refused to go in and start switching on this train, and the other members of the crew were C. R. Bunch and C. F. Bell, and they were relieved at 5:00 A.M.

Q. What day was that? A. That was on the 4th and the 27th. They went on to the 28th. They were relieved on the 28th.

Q. That was Friday morning? A. Yes, sir.

Q. The train they refused to switch, did it contain partly cars destined to the FEC and partly cars destined to other railroads? A. Yes, sir. I think there was a total of nine cars that came in, a few on the head end and a few on the [19] rear which they refused to handle, and the next incident catches the head end of this same train. Job 45, T. E. Hunton, Conductor, Switchman A. L. Oates, Switchman W. H. Matthews and Engineer J. R. Ford on duty at 11:30 P.M. on the 27th refused to switch the head end of 175. They were relieved at 5:25 A.M. on the 28th.

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Cross Examination by Mr. Milledge:

Q. Now, Mr. Jennette, you were out at the place [20] where the men were carrying signs at the employees' entrance to Moncrief on a number of occasions; were you not?

A. Yes, sir, I was.

Q. Now, those men that were carrying signs did identify themselves as being FEC employees who were on strike to you; did they not, sir? A. Yes.

Q. And they also identified themselves as being engineers? A. Yes, sir.

Q. All right. Now, they had conversations, did they not, with a large majority of the employees coming into Moncrief Yard? A. Yes, sir. They talked to a lot of people.

Q. Now, you overheard some of those conversations?

A. No, I couldn't say I overheard any of them. I stood over back out to one side.

Q. They were not asking the employees not to cross the picket line? In other words, they were actually asking them to go in, but not to do some of their work when they got inside? A. That was my understanding. They were urging the employees to go to work but refuse to handle FEC cars.

Q. Now, there weren't any employees that came up to the picket line and then turned around and went home? [21] They all went in and if they got relieved, they got relieved once they were inside the yard? A. That's my understanding; yes, sir.

Q. All right, and you understood that what they were asking of the employees was that they make the words "common cause" were words that were used or bandied about, anyway that was the word used, wasn't it? A. That was the words used in Mr. Sims' letter.

Q. All right. Now, was there anything out there other than—at the employees' entrance other than peaceful conduct? A. It was all peaceful that I saw.

Q. Now, all of your employees who refused to do work, refused to handle cars to or from FEC; is that correct? I mean when they refused it was because— A. That's right.

Q. —because of FEC traffic? A. That's right.

Q. Now, how many men do you have operating crews, that is engineers, firemen, switchmen and conductors of yard crews in Moncrief Yard? About how many men do you have on? A. Well, I know we have got 40 assignments in the Jacksonville area which includes the industrial area on the east side of town and there's four men—at least [22] four men to a crew and five on a few of them, so it would be between a hundred and sixty and a hundred and seventy-five men at least involved in those assignments.

Q. All right, sir. Now, many of the jobs don't have—don't deal with FEC work; isn't that true? A. Well, quite a few of them do not. Some cars handled over at export by our crews, which is an industrial switching area, and there may or may not be a car in there for Florida East Coast.

Q. Now, how many different men, if you might be able to tell me, refused to handle FEC traffic? A. Well, this was a total of 27 in this list and we had a road crew—right after, some time around 8:00 o'clock; soon after 8:00 o'clock on Friday morning that refused to pull a train out going to Waycross that had some FEC traffic in it, so that would be a total of 32 men.

Q. Now, did you for some of the men out there, did you just relieve them temporarily, just long enough to have a supervisor, supervisory crew couple up or uncouple and move the FEC traffic and then put the regular crew, let them handle the rest of their work? A. There was one instance on the morning of the 28th. A Conductor Green refused to handle some FEC cars and at that time he stood aside and the general yard master—the engine was already manned by the supervisory foreman [23] of the engines and they moved three cars off of this—we refer to it as 20 lead, and they went back to work and switched off. 5:00 o'clock that morning when the in-bound train came in and they refused to classify it.

Q. Now, the men you just talked about, or this man Green was doing his work until he came to an FEC movement and then he refused to do that. That was the first one and you used a supervisor and then he continued to do the rest of his work up until the point he ran into some more FEC traffic? A. That's right.

Q. Now, at that point did you use a supervisor to switch the FEC traffic out of the train that had come in from

Waycross? A. Well, after he was relieved at 5:00 A.M. we used supervisors to switch that train; yes, sir.

Q. But at 5:00 A.M. did you take supervisors and just pull the FEC cars out of the road—train, and let him go back to doing the rest of the train or did you just relieve him? A. No. He was relieved and he left the train. Now, that train was mixed up for quite a few cars in the rear. There were none of them, you might say, adjacent to each other.

Q. Now, all of this activity that we have been [24] talking about as far as your employees refusing to handle FEC traffic occurred in Moncrief Yard; did it not? A. Yes, sir.

Q. And that is a yard owned by ACL? A. (Nods head.)

Q. Did any employees other than ACL work in that yard? A. No, sir. The Weighing and Inspection Bureau had one man assigned out there, but all the other employees are ACL.

Q. Are there FEC employees that run trains in that yard, run engines in Moncrief Yard? A. They make deliveries.

Q. Do they run engines? A. They have to to make deliveries.

Q. There are other employees that work there; I mean there are FEC employees that work— A. I didn't understand. I'm sorry. I didn't understand the question. Southern Railroad, Seaboard and FEC employees come into Moncrief Yard to make delivery of cars and FEC employees also pick up in Moncrief Yard, that the other two railroads do not.

Q. Now, where do the FEC engines—let's talk a minute about interchange with FEC. What do we mean by the term interchange? [25] A. Well, interchange is a time when one railroad delivers cars to another railroad along with the documents that accompany the car and one railroad

releases them and another railroad picks them up and takes full possession of them.

Q. Now, as far as deliveries, let's talk about southbound. I think that is easier when traffic is moving southbound and it's going from ACL to FEC.

Where is that interchange of traffic made? A. It is made just north of McQuade Street in what is known at Moncrief as B Yard.

Q. That is made in Moncrief Yard; is that correct? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now, your railroad has designated interchange tracks in its B Yard for delivery of cars to FEC? A. That is true.

Q. And normally your crews put these cuts of cars into B Yard; right? A. Yes, sir.

Q. And FEC engines come onto your property in Moncrief Yard and pick them up? A. Yes, sir.

[26] Q. Now, how about northbound traffic from FEC to ACL? Where is the interchange made of that? A. The interchange there is made in what is known as H Yard which is parallel to B Yard and C Yard.

Q. That is on your property also? A. That is at Moncrief, also on our property.

Q. Now, when FEC engines come on, do FEC engines and—with their cars come into your yard, H Yard? A. They do; yes, sir.

Q. What do the engines and crews do? A. They deliver the waybills or documents accompanying the car and they either go back to Bowden as light engines or pick up cars at B Yard and leave Moncrief.

Q. All right. You said Bowden. What is Bowden? A. Bowden Yard is the Florida East Coast classification yard

on the north end of their railroad and on the south side of the St. Johns River.

Q. Do your engines and crews go down to Bowden Yard?

A. No, sir, they do not.

Q. Do your engines and crews ever go on FEC property at all? A. Not to my knowledge.

Q. They don't go south of the St. Johns River? A. They might touch the FEC right of way where [27] they switch—the newspaper building over here, they switch trains out very close to the north end of the Florida East Coast south-bound main line.

Q. Now, if FEC engines were not allowed to come into your yard to either deliver or receive traffic, that would effectively end the interchange of traffic between FEC and ACL; would it not?

Mr. Foster: Read that back, please.

(The last question was read by the reporter.)

A. There's a lot of things involved there. I don't think I am prepared to answer that question, because there is a lot of obligations which the Coast Line—

Q. I am not talking about—if there was some kind of a physical barrier that kept them from going onto your property, that would end the interchange; I mean, that would end the flow of traffic to and from? A. Well, it stands to reason if you close the gate nothing can get out or get in. I don't know if that is what you mean or not.

Q. Now, while this activity was going on of your employees refusing to handle FEC traffic, did you rearrange any of the switching road jobs in Moncrief Yard? A. No, sir, not to my knowledge.

Q. Didn't you have your—strike that.

Normally your switching crews make up a train [28] and then a road crew, say, on the northbound movement, then your road crew comes on and moves it out north; isn't that the way you usually have done it? A. The yard crew makes up the train and the road crew puts their engine on and couples up and departs.

Q. Now, normally when FEC delivers cars into H Yard, those cars are normally moved up to C Yard and put into a train for northbound movement? A. Either C or H. Might be parked in C Yard.

Might depart strictly from H. Most trains do. C is an in-bound yard.

Q. Didn't you in the last day or two when there was an FEC cut in H Yard and your crews wouldn't move it, didn't you just put a caboose on the back of it and then have your road crews back down and double over and couple onto that cut of cars that was already standing in H Yard?

A. A solid cut of Florida East Coast cars?

Q. Just put a caboose on it and couple up to it? A. No, sir.

Q. You didn't do that? A. No, sir.

Q. When you make up the train when you go north to Waycross and when your road crew comes out there, does your road crew just have to pull straight out or do they have to pull out and back in and couple onto another cut [29] and pull out and back in again and couple onto some more? A. Quite a few times they have done what is referred to as doubling out when you pick up cars on more than one track, and most trains have sufficient length that they do double back on more than one track, some of the piggyback trains.

Q. How long is the yard from one end to the other? A. Well, it's—including B Yard all the way to the north end of C Yard it's just under two miles long, I'd say.

Q. Now, this yard runs from McQuade Street all the way up to Kings Road? A. Yes, sir.

Q. And that is the distance you are talking about as two miles? A. Yes, sir, close to two miles.

Q. Now, how long are your trains that run to Waycross? A. How long?

Q. Uh-huh. A. I really couldn't say, probably anywhere from 75 to 150 cars. It would depend on what the train is, whether it is—we run various types of trains.

Q. Now, how many cars to the mile? [30] A. Well, we have so many of these long piggyback cars, it's really hard nowadays to say.

Q. Say— A. In other words, the length of a train, because they are mixed so bad. I'd have to do some figuring before I could testify to that.

Q. Well, your shortest cars are around— A. Shortest cars are 40 feet, boxes, and the longest ones 80—around 89 foot, piggyback cars.

Q. Well, now, on some of these trains, Mr. Jennette, when you take them out you double them over and they reach all the way back, reach all the way back down into H Yard? A. Well, if they are doubling out of H Yard, we pick up two tracks out of H Yard. If we are doubling out of C Yard, we double up and pick up out of two tracks in C Yard.

Q. Now, when these FEC engines come into your yard, over what part of the yard do they run? A. Well, they come in H Yard, depending on whether it is a long cut or a short cut—if it is a long cut of cars it probably comes in Tracks, say 3, 4, 5, which is alongside of the yard. If they are short, they might come in on Tracks 9, 10, 11 or 12 and they would cut loose their cars, they would deliver the documents at the [31] yard office and then immediately go back

to the south end of the yard for whatever instructions or assignments they have from their Bowden Yard supervisor.

Q. Where is the—is the yard office the farthest they come? A. Yes, sir.

Q. They come in over McQuade Street and they work in H Yard; that is they uncouple or place the cars there and then they come up to the yard office? A. Yes, sir.

Q. And about how far is it from McQuade Street up to the yard office? A. It's about, somewhere close to a mile and a half.

Q. So it's about—the yard office is about half a mile or a little over from the north end of the yard and about a mile and a half or a little less from the south end? A. That's—they are approximate distances.

Q. All right. Mr. Jennette, do the FEC crews sometimes switch out damaged cars? In other words, if they delivered a cut of cars and there happens to be a damaged car in there, do they sometimes switch those out? A. Over at B Yard?

Q. Um-hum. [32] A. As far as I know we don't deliver any damaged cars to them. We inspect them before they are delivered.

Q. Mr. Jennette, does ACL operate in states other than Florida? A. Yes.

Q. And in what states does it operate? A. Georgia, South Carolina, North Carolina, Virginia, Alabama.

Q. And how far north does the ACL system run? A. Richmond, Virginia.

Q. And how far up into the northwest or how far [33] west does the system go? A. Birmingham.

Q. Now, these cars that FEC delivers for northbound shipment into Moncrief Yard, for the most part are these

destined to be moved out of the State of Florida? A. Well, I tell you, a large percentage of them are; yes, sir.

Q. Now, this traffic that is coming southbound for delivery to FEC, that comes in from Waycross down here to Jacksonville? A. It either comes through Savannah or Waycross.

Q. And in those areas, Savannah and Waycross, it is received from all over your system? A. That is true, and even off the system.

Q. Now, do you know why it was that the—these different men were relieved and sent home rather than just taken off the engine temporarily while a move for FEC was made by supervisors? Do you know what the management decision was on that? A. It was the management decision to relieve them.

Q. Prior to this activity taking place, that is the men refusing to handle FEC traffic, had you received instructions that if these men refused that they were not to be fired, but simply relieved? A. Was that my understanding of my instructions?

[34] Q. Yes. A. Yes, sir.

Q. Now, since the truce, there was a truce in this activity; was there not, commencing I believe it was sometime, oh, the latter part of Friday morning, some time Friday the men resumed managing FEC traffic temporarily; is that correct? A. I heard about it late Friday afternoon. I don't know just when it took place.

Mr. Foster: If you would care to do this, we are prepared to stipulate that the picketing and other activity did cease on Friday and since that time the employees of ACL have carried out all of their duties and continued to do so.

Mr. Milledge: All right.

By Mr. Milledge:

Q. And these employees who continued to handle FEC traffic are back to work? A. They are all marked up, and my understanding is they are back to work.

Q. All right, sir. Now, you had conversations not only with the men carrying the signs but also with me; did you not, out there? A. Yes, sir.

[35] Q. And you had some conversations, I believe, with other different union people or at least they were there, like Mr. Sims? A. I talked to you and Mr. Sims.

Q. You understood, did you not, that the purpose of this activity was only to stop FEC traffic? A. That was my understanding; yes, sir.

Q. Does ACL have collective bargaining contracts with the engineers and with the other operating personnel? A. I am sure we do. We have someone here who is more capable of testifying to that than I am.

Q. Mr. Jennette, as you understand it, there is some dispute or has been some dispute as to whether or not your employees have a right to refuse to handle FEC traffic; is that not correct? A. I am not prepared to answer that.

Mr. Milledge: That is all I have.

Redirect Examination by Mr. Foster:

Q. Mr. Jennette, did the picketing and displaying of this letter that has been identified as Plaintiff's Exhibit 3 continue through the time that the truce was reached on Friday? A. Yes, sir.

[36] Q. And since the picketing and other activity at the entranceway have ceased, have all ACL employees performed all of their duties at Moncrief Yard? A. Yes, sir.

Q. Now, do any FEC employees report to work at Moncrief Yard as distinguished from running engines into—
A. No, they do not report to work there.

Q. You referred to B Yard, C Yard and H Yard. Do those letters merely designate tracks which form part of the whole Moncrief system and do all of the tracks form one integral part of the yard? A. All one yard; yes, sir.

Q. The refusing to work you testified about this morning, did all of the refusing to work happen on or in Moncrief Yard? A. Yes, sir.

Q. Does all interchange that occurs between FEC and ACL take place in Moncrief Yard in Jacksonville, Florida? A. Yes, sir, it does.

Q. In respect to H Yard, do any carriers besides from FEC deliver cars there to the ACL? A. The Seaboard delivers in H Yard to ACL.

Q. Where does Southern deliver? A. They deliver in C Yard. They come in from [37] the north from what is known as Simpson Yard on their railroad.

Mr. Foster: That's all I have.

Recross Examination by Mr. Milledge:

Q. What kind of facility, Mr. Jenhette, is the Jacksonville Terminal Company in regard to freight traffic? I'm not talking about passenger traffic. A. Jacksonville Terminal Company has three freight yards within its perimeter, and these freight yards are used for the interchange of traffic between Seaboard and FEC and Southern and FEC and FEC and Jacksonville Terminal Company proper.

Q. So all interchange between FEC and the other carriers that connect with the Jacksonville Terminal Company, Seaboard and Southern are all done on Terminal

Company property, whereas FEC-ACL interchanges are done on ACL property? A. That's right.

Mr. Foster: That's all I have.

Mr. Milledge: No more questions.

The Court: All right, sir. Thank you, sir.

(Witness excused.)

[44]

DEWITT M. STRICKLAND, having been produced and first duly sworn as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Foster:

Q. State your name, please. A. DeWitt M. Strickland.

Q. By whom are you employed, Mr. Strickland? A. By the Atlantic Coast Line Railroad Company.

Q. Where do you live? A. I live in Jacksonville, Florida.

Q. What is the title of your position with the [45] Coast Line, Mr. Strickland? A. Superintendent of terminals, Jacksonville.

Q. What does that job category cover, that supervisory job cover, Mr. Strickland? A. Jurisdiction over the terminal operation for the Coast Line in Jacksonville, Florida.

Q. Does that include Moncrief Yard? A. Yes, sir.

Q. Is that the primary facility that the ACL— A. That's the larger one; yes, sir.

Q. Do you know, Mr. Strickland, whether there are any other available facilities in the County that is as large an operation in terms of number of railroad cars handled on the basis of a month, say, as the Moncrief Yard is? A. There is not. Moncrief is the largest.

Q. Now, in order to help the Court understand the way Moncrief Yard functions Mr. Strickland, I'd appreciate it if you would take this map, explain to the Court how Moncrief Yard is laid out. A. Moncrief Yard is an arrangement of tracks that we use for classification, receiving and dispatching trains, also receiving interchange from other railroads. It is almost north and south, and the beginning of it at the south side is approximately at McQuade Street. Let's [46] see. That would be right here (indicating).

Q. Where is McQuade Street, the McQuade Street crossing with respect to the Beaver Street viaduct which the Court might be familiar with? A. Approximately 75 feet north.

Q. Would you point to where the viaduct would be? A. This would be Beaver Street viaduct.

Q. Where would the properties of Jacksonville Terminal Company be? A. They join approximately at Bay Street. Those under Beaver Street would be the Jacksonville Terminal property.

Q. All right, sir. With respect to the map, would you show the Court where the employees' entrance to Moncrief Yard is? A. The employees' entrance is where you see the shop buildings, the road comes in just south of that angle of the building which is the shop building there and that's the Moncrief Yard office where they report for service.

Q. The building circled in red is the yard office? A. That's correct.

Q. And that's where the men report for service? A. Yes, sir.

Q. Is there an entranceway on the bottom side of [47] the map underneath where the building is encircled? A. That is correct.

Q. Where is the north end of the yard? A. The north end of the yard is approximately Old Kings Road.

Q. That would be the end opposite from McQuade Street? A. That is correct.

Mr. Milledge: That is the left-hand side of this map; is that right?

Mr. Foster: That's right, as you are facing it.

By Mr. Foster:

Q. Mr. Strickland, if you will, show the Court where in Moncrief Yard you have the various yards that make it up. We have had reference here this morning to H Yard, B Yard and C Yard, so if you can— A. We have—Moncrief Yard is made up principally of three yards. We call them B Yard, H Yard and C Yard. The south end of B Yard starts at McQuade Street and comes in this direction up to there, which is approximately I would say 3500 feet.

B Yard consists of 15 tracks.

H Yard starts about 1500 feet north of McQuade Street and it consists of 13 tracks.

[48] C Yard—the north end of C Yard begins at Old Kings Road on there and it comes down approximately 4500 feet, I would say, and consists of 22 tracks.

Q. Now, Mr. Strickland, are those three yards marked in red on this map? A. Yes, sir. This is marked as C Yard. You can see where the area is at the westernmost track of C Yard is and this is the easternmost track of C Yard.

H Yard is down here and that is the easternmost track, and this is the westernmost track, and B Yard is marked here and the eastern and western tracks.

Q. All right, sir. If you will, show the Court where cars are delivered to ACL by FEC in Moncrief Yard. A. The

FEC delivers cars to us in H Yard along in this area (indicating).

Q. How do the cars get into H Yard? From which direction do they come? A. They come south to north.

Q. Would you indicate on the map there? A. Yes, sir. They come under the Beaver Street viaduct, underneath McQuade Street down to what we call H Yard and into the designated track in H Yard.

Q. As I understand it from Mr. Jennette's testimony, the Seaboard also makes deliveries into H Yard? [49] A. The same move; yes, sir.

Q. Would you show the Court how cars are delivered to FEC by ACL in Moncrief Yard? A. The cars delivered to the FEC arrive on Coast Line trains. They switch out of the trains into a track.

Q. Where is that done? A. That is done in C Yard, principally C Yard. The cars are assembled on Track 17 in C Yard. After the cars are assembled, we simply couple an engine to C Yard 17, that's about there, and we pull it straight down into B Yard and cut off and deliver it to the FEC.

Q. Where do the trains come into Moncrief from the north? A. They come into C Yard.

Q. Indicate how they come in. A. They cross Old Kings Road and come into the track we instruct them to come into, either of the 20 tracks.

Q. How do trains come into the Moncrief Yard over the Ocala— A. Ocala deliveries, they come the same way over the Ocala main line and come over Old Kings Road, into C Yard.

Q. How do the trains come in from and go out of Moncrief to your Tampa division? [50] A. Tampa division comes from the Tampa main line from the south to the north. They come in over Beaver Street, by Beaver Street

into H Yard, the same way the Seaboard and FEC bring their deliveries.

Mr. Foster: Okay. I have some other questions, but it might be appropriate for Mr. Milledge to question him on the map at this point.

Cross Examination by Mr. Milledge:

Q. FEC engines come into your yard over McQuade Street and how far do they go? A. How far the cars go depends on how many they have. If they have less than four cars—or 45 cars, we will put them in one of the shorter tracks in H Yard. If they have a long cut of cars, then we give them a long track. Occasionally we will require them to double in; that is if they have more cars than will hold in a short track, we will double them into another short track. After they cut off the cars, then the crew, the light engine with no cars, they go over into this area and stop in Moncrief Yard and deliver the documents to the yard office, which is encircled in red.

Q. When you say "light engine" that just means an [51] engine just by itself? A. That's right, nothing attached to it, a light engine.

Q. In that case the personnel go— A. The switchman making the cut, he stays in H Yard. When they go back they pick him up.

Q. Now, the road going into Moncrief Yard, the employee's entrance road itself, is it shown on here? A. No, it is not shown, but it comes right across there, goes across all these tracks and we have a parking area right in there for all the employees (indicating).

Q. And "right in there" is the area right next to the yard office? A. That is correct.

Q. The road generally in the vicinity of where the "M" is

on Moncrief Yard, a little on the left of it? A: Little on the left; yes, sir.

[55]

Q. Were you also present when an incident involving a road crew occurred about which Mr. Jennette did not testify? A. Yes, sir.

Q. If you will, tell the Court what occurred with respect to the road crew and when it happened. A. That was Friday morning, the 28th. We had this train called to leave Jacksonville going to Waycross, to leave at 8:45. About 9:00 o'clock, 9:00 A.M. the yard master told me that the crew wouldn't leave.

I went and saw the conductor, who was J. C. Williamson, and I asked him what the trouble was. He told me he couldn't handle the train because we had some cars that came over from the FEC. I also saw the flagman, L. S. DeVegter.

Mr. Milledge: I think I would like to object on the basis of hearsay.

[57]

The Court: I will sustain the objection.

By Mr. Foster:

Q. All right, sir. Well, if you will, Mr. Strickland, confine yourself to what happened, that is what you observed with your own eyes, but not what these men told you. A. Well, the train was ready to go. They had already made the brake test, the terminal brake test and the conductor had his list of cars in the train and he had the

waybills to move the cars that went with the list. That was about 9:00 o'clock A.M.

At 9:10 A.M. the conductor, flagmen and brakemen left the office and went walking toward the bus stop. That is where the bus picks them up to bring them back to town, and in the meantime the engineer had left the engine. He was with them. They were trying to catch the bus that leaves Moncrief at 9:15 and I came back through my office or through the big office and I saw this fireman named J. C. Sykes. I didn't know in the beginning that the train had a fireman, but he also left the property. I don't think he caught the 9:15 bus, because it was after that then, but he also left.

The train was not handled out of Moncrief by [58] the crew that was called to handle the train.

Q. Did the train have cars in it which ACL had received from FEC? A. Yes, sir.

Q. And that train was destined for the north? A. Yes, sir.

Q. And did it move with employees of ACL other than supervisory employees? A. Did not move with other than supervisory employees.

Q. And when it moved, who was in the engine? I don't mean names, but what category did the men fall into? A. The engineer was named—I mean he was a road foreman of engines and we had two other supervisors on the train.

Q. And what time did the train move? A. 9:17 A.M.

Q. Was it on time or late? A. 32 minutes late.

[59]

Q. Now, during the past week, that is Tuesday through Friday, Mr. Strickland, were there any changes or differ-

ences in the kind of work that employees refused to do in Moncrief Yard? A. Yes, sir.

[60] Q. If you will, describe for the Court what changes did occur in that respect. A. In the beginning it only involved engineers who refused to handle what we call solid cuts of FEC cars; that is cars that came from the FEC or that were going to the FEC.

Q. Would you give me an example of where one of those solid cuts were destined to be moved from and to and what the purpose of the move would be? A. Yes, sir. Whenever the FEC delivers in H Yard, that is a solid cut, a solid block of cars coming from the FEC to the ACL and these engineers in the beginning would refuse to switch up or classify those solid blocks. They would refuse to—we would assemble a block of cars in C Yard, Track 17 for movement down to B Yard and delivery to the FEC. They would refuse to handle that solid block of cars from C Yard to B Yard.

I believe it was—it was Thursday morning that the yard conductors and switchmen began refusing to handle solid blocks of FEC cars the same as engineers.

Q. This would be two additional crafts? A. That would be one additional craft. The conductors and yard switchmen belong to the Brotherhood of Railroad Trainmen, which is one craft.

Then later, Friday, early Friday morning I [61] believe or late Thursday night, then the engineers and the yardmen refused to handle FEC cars period. That is, it didn't have to—if it came in mixed up with ACL cars, they would switch ACL cars until they got to the FEC cars. Then they would refuse to switch any further on that particular train.

Q. Would they refuse to switch forward although there were some cars in the remaining part of the train not

destined to FEC? A. That is correct. If their next car was destined to go to the FEC, then they would refuse to switch that car, and then Friday morning about 9:00 o'clock is when the road crew refused to move the train.

[62]

Q. Mr. Strickland, if you will, tell me what the practical effect insofar as the operation of Moncrief Yard with respect to the refusals of ACL employees to work last week. In other words, describe what effect these refusals to work had on the overall operation of Moncrief Yard between Tuesday and Friday of last week when the truce was reached. A. The refusal to do normal work resulted in an accumulation of cars.

Mr. Milledge: Excuse me. I'd like to object to it framed this way. I don't mind having this man testify what did happen, but I think—

The Court: I thought that was his question.

Mr. Foster: Yes, what happened. Fine.

The Court: That was my understanding of the question.

The Witness: The refusal to do normal work resulted in more cars than usual [63] accumulating in the yard and standing in the main yard which is Moncrief Yard for longer periods of time and this, of course, included cars that were going to various people from Jacksonville. The spotting of cars or the pacing of cars to the various customers were delayed. We were probably about—we were probably approximately 12 or 16 hours behind with our terminal switching due to the congestion in the yard at the time this truce was called. We were delaying cars.

Q. Would some of the cars switched to these industries in Duval County come from and go to FEC through this interchange in Moncrief Yard? A. Yes, sir.

Q. If the activity which occurred last week began again, would there be a similar slowdown in pickup and delivery to these industries similar to that which occurred last week? A. Yes, sir.

[66]

Q. Referring back to the various parts of the Moncrief Yard that have been referred to previously, B Yard, C Yard and H Yard, if employees of Moncrief Yard refused to classify cars in C Yard for the reasoning given heretofore in the testimony here today, does that have an effect on the movement and classification of cars that are not destined for FEC? A. Yes, sir.

Q. In what way does it affect them? A. If they refused to move the FEC car, then you have an ACL car, a car going south on ACL, that would be delayed. You'd have to make some other arrangements.

Q. Would that be true as well with respect to cars that are being interchanged with Southern and ACL? A. It would delay Southern and ACL.

Q. Would that also be true with respect to switching in H Yard? A. Yes, sir, it would be the same principle.

Mr. Foster: That's all I have.

[69]

Cross Examination by Mr. Milledge:

Q. During the year to the FEC, but you get a car [70] count of 400 handling the 200 cars, and the same thing going north.

The Court: Your total traffic is 25% rather than 15%. As I say, I don't know anything about the

accuracy of it. I don't even know whether it is material to the hearing or not.

The Witness: I believe we handle, 25% of our cars are FEC, either going to or coming from.

By Mr. Milledge:

Q. Either coming or going? A. Yes, sir; I believe it is 25%.

Q. Now, these industries that you named, Southern Material, A & P Warehouse and so forth, these are industries which you switch to them right out of Moncrief Yard? A. We switch to them and switch from them.

Q. And from them? A. That's right.

Q. Some of that traffic to and from them originates from the FEC? A. Some of the traffic going to them comes from the FEC.

Q. And some going from them goes down through [71] your yard and down to the FEC? A. Right.

Q. Do the switch crews move the traffic from the industry sidings into Moncrief? A. Yes, sir.

Q. You didn't have any stoppage of that? A. None whatever.

Q. Including the FEC cars? A. Yes; that's right.

Q. All right, so all of the refusal to handle FEC business occurred right in Moncrief itself? A. That's right.

Q. All right. Okay. Now, would any of these ACL employees refuse to work, as you say, they refused to work at the point when they had to make some move regarding FEC traffic? A. That is correct.

Q. Some of them would work maybe an hour on their job until the yard master asked them to make a move which involved FEC traffic? A. That's correct.

Q. All right. Now, at that point did you relieve them, sir? A. There was—I relieved part of them and part of

them actually relieved themselves. The road crew—[72] Sometimes I didn't relieve the engineers or the firemen; they just walked off the engines without consulting anybody except possibly the conductor. There are some instances where the crews said they would no longer switch because they couldn't handle FEC cars or cars going to the FEC or that had come from the FEC and they were relieved and I relieved some of them and some of the other supervisors relieved some of them.

Q. Now, on this road move that you just told about, the two men in the engine you say really relieved themselves?

A. Apparently they did. I didn't see when they left, but I did see them walking toward the bus.

Q. How about the conductor and the brakemen and flagmen; were they relieved? A. I relieved those.

Q. I guess it was a fair assumption from the engineer and firemen you were going to relieve them, too? A. I don't know. I didn't see them. I didn't say anything to them.

Q. Did you work some of the men this way, that the men worked and then when they came to an FEC car or cars, you moved it with the supervisor and after that move was out of the way you let the regular crew continue the work?

A. Yes, sir. I believe it was Friday morning [73] that we did some of that. They were breaking up these trains that had come in from the north. When they switched off, they switched off the head block, which was all ACL cars or Seaboard. Then they came to cars going to the FEC in the train. They wouldn't switch that. We had a supervisor switch the cars out going to FEC and let them go back and switch the rest.

Q. And they were willing to do that? A. They did do it; yes, sir.

[74]

Q. What did you do if you had a block of FEC cars you took off, some off one end and some off the other;

[75] both ends? A. When Jacksonville—when freight came over from the FEC for Jacksonville proper, it was near the north end of the yard, we took a supervisory crew and set out or switched out the cars for Jacksonville proper and set the train back proper.

[76] Q. All right. Now, when these employees refused to move FEC cars in at least some of the instances you talked to them and tried to convince them they should move it; isn't that true? A. That is true.

Q. All right. A. I told them they were not FEC cars, they were Coast Line cars.

Q. And if they were Coast Line cars you felt like they ought to move them; right? A. I did. I sure did.

Q. You had a letter, didn't you, that you gave to some of them? A. Yes, I did.

Q. Take a look at that and see— A. That is the letter.

Q. That letter came over whose signature? A. C. E. Mervin, Jr., who is director of personnel.

Q. When did you first get a batch of those? A. I don't recall when we did get the first one, but I had had them a few days.

Q. You had had them before these FEC engineers started holding up the signs on Sunday? A. I had a few. I didn't have a big batch. I did [77] have a sample and a few more copies.

Mr. Milledge: Do you mind if we just offer this at this time out of turn?

Mr. Foster: No objection.

The Court: Well, receive it as Defendants' Exhibit 1.

(The instrument last above referred to was received in evidence as Defendants' Exhibit No. 1.)

By Mr. Milledge:

Q. Now, Mr. Strickland, even before Sunday when this—the signs started being carried, you had instructions that such activity as this might occur; had you not? A. I had had advice that this may be the activity that would be engaged in; yes, sir.

Q. There was discussion as to what should be done if it did begin? A. Yes, sir.

Q. Could you tell us about when you received that advice, if you recall? A. I don't recall, but it had been, oh, I'd say ten days or two weeks. It could have been more and it could have been less.

Q. Now, these road jobs that we talked about a minute ago, how many—when we say a road job, we are [78] talking about a train that is going to run out of here on the main line; right? A. That's right.

Q. When we talk about a—switch work, that is something that happens in the yard and a road job is something that is going to run out on the main line; right? A. Right.

Q. Now, how many of these trains that are going to run on the main line were affected? Was it just two or more than two? A. One.

Q. Just one? A. Yes.

[79]

Q. Is Moncrief owned by ACL? A. Yes, sir.

Q. Does Moncrief Yard adjoin any track or other property of the Florida East Coast? A. No, sir.

[80] Q. Can you tell me the approximate distance from the north end of the FEC property and the south end of Moncrief Yard? A. I would say 7,000 feet.

Q. And what property intervenes between Moncrief Yard and the northern end of the Florida East Coast tracks? A. The property of the Jacksonville Terminal Company.

[93]

L. T. ANDREWS, having been produced and first duly sworn as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Foster:

Q. State your name, please. A. L. T. Andrews.

Q. What is your occupation? A. General manager, Atlantic Coast Line Railroad.

Q. What is the general nature of your duties as general manager? A. Overall supervision of the movement of traffic on Atlantic Coast Line, the furnishing of equipment to load it in and the moving of the cars after they are loaded, general supervision over trains and the yard as well as the movement of trains.

[95]

Q. Now, there has been testimony with respect to the delivery of cars by ACL to FEC in Moncrief Yard, and the other way around, deliveries to, in Moncrief Yard.

Would you tell me, sir, the point at which ACL relinquishes control of cars that are delivered to FEC? A. We have in what we would call B Yard, a portion of Moncrief Yard, designated interchange tracks on which Coast Line places cars for delivery to the FEC. At the time and date those cars are placed on the interchange track and the documents made available to the FEC, the cars then become the sole property of the Florida [96] East Coast.

Q. What about the cars that are delivered by FEC in Moncrief Yard? A. The FEC makes the deliveries to

Coast Line at designated tracks in what we refer to as H Yard. After the FEC engineer pulls the cars into those tracks, then makes the documents available to the Coast Line, the cars then become the sole property of the Coast Line.

[106]

Q. Can you give me an approximate percentage of the overall cars which come in ACL and go out ACL to other points on the ACL system? A. Based on the samplings which I have done, it would be right close to 25%.

Q. Now, that is FEC or ACL? A. Coming in on Coast Line and going out on Coast Line that is delivered to or received from the FEC.

[108]

Q. Let me rephrase it.

Insofar as the procedure followed whereby FEC will deliver cars to ACL in Moncrief Yard and pick up cars delivered by ACL in Moncrief Yard, do you know how long that procedure has been followed? A. In excess of 25 years; for a longer period than that. I don't know how much longer.

Mr. Foster: That is all I have.

Cross Examination by Mr. Milledge:

Q. This agreement by which FEC delivered and received in your yard, is an agreement between your railroad and FEC; is it not? A. Yes, sir.

Q. All right. Now, that is a novel or unique arrangement; is it not, by which one railroad both receives and delivers in another railroad's yard? [109] A. No, sir, it is not novel or unique. I know in Richmond with the R.F.E.P. we do the same thing, and Savannah, except in those places Coast Line makes it.

Q. With the Seaboard? A. In Richmond and Savannah we pick up in the Seaboard and deliver, and in Savannah we do the same thing, make deliveries and pick up.

Q. Is there a terminal company in either of those places such as Jacksonville Terminal? A. Their Richmond Terminal and down in Savannah there was one jointly owned. It was recently destroyed, but it had nothing to do with the manner of interchange.

Q. Was any interchange done in either of those two terminals? A. No, sir.

Q. Here in Jacksonville interchange with other railroads except for FEC is done in the Terminal Company, except for ACL; is that right? A. That's right.

Q. Now, you have to pay FEC some amount of money when they come into your yard, don't you? A. Yes. We pay them an agreed—an agreed to basis.

[111] A. My job is to handle the traffic or operate the trains and the yard so as to properly handle the traffic over the Coast Line system.

Q. Do you have any governmental agencies you report to? A. Governmental agencies?

Q. Yes, sir, do you report to the ICC, Interstate Commerce Commission? A. Well, I am the reporting officer from the ACL to the Interstate Commerce Commission on some functions.

Q. Now, there was one road train on which the crew refused to move it out because it contained FEC traffic; just one, now, is that correct? A. There had only been one at the time of the—ceased the hostilities.

Q. All right, sir. And how many—how late was that in the bargain? A. I can't give you the exact figure, be-

cause I was not at Monerief that morning, but it wasn't delayed much in departing.

Q. 32 minutes? A. Because we had some supervisors out there that we put aboard.

Q. That would be approximately right, around 32 minutes late? [112] A. I would say approximately; right.

.

[113] Q. Now, these crews that refused to work, the only thing they refused to do was to handle FEC traffic; isn't that correct? A. They refused to move cars that belonged to the ACL Railroad. They did not belong to the Florida East Coast. They had either not been delivered to the FEC or FEC had completed the delivery on the cars. It was Atlantic Coast Line cars which they refused to handle then.

Q. Whatever you want to call it, it was freight to or from FEC; right? A. Yes.

Q. Now, did the crews refuse to handle any through movement or what would have been through cars, anyway, that came in on ACL and were going out on ACL? A. Well, in refusing to move the train to Waycross, they refused to handle cars that came in on the Coast Line and went out on the Coast Line.

Q. Did you make any efforts to segregate the FEC traffic or did you just go ahead and make it up with other traffic? A. Well, I will explain again. It was Coast Line traffic as far as we are concerned, was not FEC traffic. We put it into the outbound train.

Q. Well, accepting for the moment my definition [114] of FEC traffic, that is traffic to or from FEC, did you segregate that traffic and move it out in one train or did you mix it in with unrelated traffic? A. We switched the traffic from FEC origin and from Coast Line origin in one train, intermingled together.

Q. You knew your employees would move out traffic that was not to or from FEC, didn't you? A. Well, I did not know that they would not move out traffic that was on an outbound train from the FEC at the time they refused to move this particular train.

Q. Well, if you had known then I take it you could have segregated that into separate trains? A. No, sir. We don't drive a separate train for traffic that comes from each different origin or each different shipper. We have to handle it intermingled in and out of Jacksonville in the road trains.

Q. Well, if you had moved it out and put it in a separate operation, you knew your crews would move it; they hadn't refused to move any wholly what you would call unrelated traffic, unrelated to FEC? A. Well, the road crews had not refused to move any traffic to or from the Florida East Coast up until this one time, hadn't refused to move any train up until this instance.

Q. Your switch crews had moved all movements [115] unrelated to FEC? A. In switching an inbound train they would switch cars destined to Jacksonville, Coast Line or Seaboard. When they'd get down to the car in the inbound group destined to a point on the FEC, they would stop.

Q. All right, sir. Now, as of the Friday morning truce, as of that date had you relieved different switching crews? Had you sent them home? A. We relieved them when they refused to perform the work to which they were assigned.

Q. You had relieved them from further duty altogether the next day as well? A. We relieved them, told them they would hear from us later.

Q. And from the time they were relieved, if it was—whatever day it was, Tuesday or Wednesday or Thursday, you didn't—you made a decision you didn't want them to do any work until they would handle all the work; is that right? A. Well, we didn't have any work out at Motherief

Yard to which the employees were assigned that would be confined to the handling of traffic other than traffic that originated or was destined to the Florida East Coast.

Q. Starting on Thursday, you let some men continue to work even though they refused to handle FEC [116] traffic, put supervisors on to make the FEC move and then put the regular crew back on; didn't you do that? A. There was a few instances of that kind.

Q. Other men you didn't do that. That was a management decision to relieve them entirely; isn't that true? A. No, sir. We were trying to find some medium ground to try to keep from closing down Moncrief Yard.

Q. And there is a medium ground there, isn't there, letting the supervisors make the FEC moves and having your regular crews make the other moves? A. No, sir. I don't consider that to be a medium ground and I don't consider that we could operate under such a situation.

Q. Now, you told us a few minutes ago that there was some kind of detrimental effect on ACL moves, coming in ACL and going out ACL. You don't mean to tell me your yard crews or road crews were refusing to move traffic that came in on ACL and was also going out on ACL? A. No, they did not refuse that, but because of their refusal to work and handle the cars interchanged from the ACL and FEC down-state destinations, it slowed us up badly and we got further and further behind.

Q. Isn't it true, Mr. Andrews, that the slowdown came because you relieved 30 men entirely of their duties? [117] A. The slowdown came because the men out there would not perform the switching, the switching to the FEC or from FEC interchanges with Coast Line or cars from FEC, and when they refused to handle it, we had to get those crews out of the way and try to get somebody that would do the

work, and the cause—it was a very slowing down operation and it got slower and slower.

Q. Now, how about the mail that you were talking about? You don't deliver mail—FEC doesn't carry any mail over its rails any more, does it? A. No, sir. FEC doesn't handle that.

Q. So any kind of mail you are talking about is mail going in and out on ACL; isn't that true? A. That is correct.

Q. Did you have any accidents out there? A. We had some derailments; yes, sir.

Q. Through your supervisors? A. Offhand I can't tell you who was running the engines or how many switches when it happened, but I had some reports come across my desk about some derailments out there.

Q. That happened before Sunday night, didn't it? A. It happened during the period we were working with the supervisors and the others intermingled out there.

Q. You have derailments out there quite [118] frequently, don't you? A. We have them occasionally; yes, sir.

[120]

Q. Now, if ACL people refused to receive or deliver to FEC, what effect would that have on FEC interchange? I mean, would it cut it off? A. If they refused to deliver to or receive from it, bound to cut it off. It would cut off Coast Line [121] revenues, too.

Q. Do you know approximately how much of FEC interchange through the Jacksonville Gateway comes from ACL, that is both ways? A. No, I have not checked those figures. We have a substantial interchange with the Florida East Coast.

Q. It would be roughly 60% of interchange in this area with the ACL? A. I would hesitate to estimate it, because I haven't looked at the figures. It could very well be.

Q. Now, straighten us out on something.

On a monthly basis you have got a 93,000 car count; right? A. Yes, approximately. That is, it varies from month to month.

Q. All right. How many to and from FEC? A. Of that count it would be roughly—within a 12-month period we have between seventy-five and eighty thousand cars in each direction. In a 12-month period we direct seventy-five to eighty thousand and get from them approximately seventy-five to eighty thousand, which averages roughly 480 cars from and to the FEC and it breaks down pretty evenly, about 220 in each direction based on a 12-month period.

[124]

Q. Now, the ACL is interested, is it not, in continuing to move traffic to FEC? A. Yes, sir.

Q. It is so interested in that that it is willing to jeopardize its whole operation in order to maintain that move; isn't that true? A. The traffic from the FEC means a lot revenue-wise to the Coast Line. Certainly we don't want to jeopardize our operation to the other part of the railroad, but we do want to handle any and all traffic that is offered to the Coast Line.

[126]

J. D. Sims, having been produced and first duly sworn as a witness on behalf of defendants, testified as follows:

Direct Examination by Mr. Milledge:

Q. Would you state your name, please, sir? A. My name is J. D. Sims.

Q. Where is your home, Mr. Sims? A. Pensacola, Florida.

Q. Do you have an official capacity with the Brotherhood of Locomotive Engineers? A. Yes, sir.

Q. What is that official capacity? [127] A. Assistant Grand Chief Engineer; vice president.

Q. Is that the same thing as a vice president? A. Yes, sir.

Q. Is that a national office, local office? A. International.

Q. Is that an appointed or elected office? A. Elected.

Q. Have you been assigned to the Florida East Coast dispute? A. Yes, sir.

Q. Now, is there a strike presently in progress between the FEC and the Brotherhood of Locomotive Engineers representing the locomotive engineers on the FEC property? A. Yes, sir.

Q. And is that a strike under the Railway Labor Act? A. Yes, sir.

Q. All right. Now, how did that—what procedures were followed prior to that strike? A. The Florida East Coast Railroad served a Section 6 notice under the Railway Labor Act, November 30th of 1964 to abrogate the existing contract between Florida East Coast and the Locomotive Engineers and substitute in lieu thereof what is commonly referred to as a yellow dog contract.

[128] Q. Now, you say this was begun by a Section 6 notice. What does that mean, Section 6 of the Railway Labor Act? A. Yes, sir.

Q. Now, is that the customary procedure followed when one railroad carrier wants to change the contract? A. Yes, sir.

Q. And is the same procedure used when a labor organization wishes to change the contract? A. Yes, sir.

Q. And is that document served on the other party? A. Yes, sir.

Q. Now, incidentally, does the Brotherhood of Locomotive Engineers, is it certified as the bargaining agent for the Locomotive Engineers on the railroad property? A. Yes, sir.

Q. Who certified it? A. The National Labor Relations Board.

Q. Is that the organization set up under the Railway Labor Act? A. Yes, sir.

Q. After the service of the Section 6 notice under the Railway Labor Act that you talked about, what [129] happened next? A. Negotiations were conducted in connection with the notice.

Q. Is that procedure provided for by the Railway Labor Act? A. Yes, sir.

Q. Were those negotiations successful? A. No, sir.

Q. Then what happened? A. After an impasse was reached, the National Mediation Board intervened and assigned a mediator.

Q. Let me stop you right there. How did the National Mediation Board get into the picture? Were those services invoked by one party or other? A. Yes, sir.

Q. In this case which party invoked the services? A. The Engineers.

Q. Now, did the National Mediation Board take jurisdiction? A. Yes, sir.

Q. Then what? Did it decide, the mediators? A. That is correct.

Q. Were there sessions with the mediator? A. Yes, sir.

[130] Q. Were representatives of the FEC present? A. Yes, sir.

Q. And representatives of your organization? A. Yes, sir.

Q. Did negotiations continue with the mediator present? A. Yes, sir.

Q. What happened—how long did those sessions go on?

A. For several months.

The Court: May I ask the materiality of this?

Mr. Milledge: Well, it is to establish there was what is called a major dispute under the Railway Labor Act.

The Court: Can't you stipulate to that?

Mr. Foster: I think we will stipulate to it. I think we may have even alleged that in the complaint.

Mr. Milledge: All right.

Q. You went through mediation and arbitration? A. Yes, sir.

Q. And that was this year? A. This year.

Q. And the B.L.E. accepted arbitration and the [131] FEC refused arbitration? A. Yes, sir.

Q. And 30 days after that, what did the FEC do, or approximately 30 days? A. They put in their notice that they served November 3, 1964.

Q. Did they change the rules of rate of pay and working conditions? A. Yes, sir.

Q. What was the response of the B.L.E.? A. Went on strike.

Q. What date was that? A. March 12, 1967.

Q. Now, when the FEC prior to this change on March 12th and March 13th, was the FEC prior to that change at that time paying engineers essentially as all other class one railroads in the United States? A. Yes, sir.

Q. Is FEC a class one railroad? A. Yes, sir.

Q. Is ACL a class one railroad? A. Yes, sir.

Q. Since that time are the rates of pay the same or are they less for engineers? A. On the FEC they are much less.

[132] Q. Now, on March 13th were any pickets placed in the Jacksonville area by the striking B.L.E. engineers of the FEC? A. Yes, sir.

Q. Where were they placed? A. McQuade Street, and Stockton Street.

Q. What did those—what movements cross Stockton Street? A. Seaboard Airline interchange to the Florida East Coast both ways; to and from.

Q. Since that date have any Seaboard union crews completed or made interchange with FEC? A. No, sir.

Q. All right. You put up the line on McQuade Street as well? A. Yes, sir.

Q. Did that affect Southern interchange with FEC? A. Yes, sir.

Q. Since that date have any union crews from Southern made interchange with FEC? A. No, sir.

Q. All right. Now, on March 11th, did you have a conference with Mr. Mervin? A. Yes, sir.

Q. Who is Mr. Mervin? [133] A. Director of personnel at the Coast Line.

Q. What was the substance and the purpose of that meeting? A. To advise Mr. Mervin where we had placed pickets and their reasons for being there and as to why we would place the pickets.

Q. Have you had meetings with Mr. Mervin since that date? A. Yes, sir.

Q. Have there been discussions with Mr. Mervin about some method of appealing to ACL employees not to effect interchange with FEC? A. Yes, sir.

Q. Now, these men that have been out at the employees' entrance to Moncrief Yard, have they been requesting ACL people not to go to work? A. No, sir.

Q. Has that been a picket line in the usual sense of a picket line? A. No, sir.

Q. Usually a picket line requests people not to cross it; is that correct? A. That is correct.

Q. Now, were these ACL employees, what were they requested to do? [134] A. Not handle FEC interchange to and from FEC.

Q. What were they requested to do in regard to the rest of ACL operation in Moncrief Yard? A. Continue as usual.

Q. Now, was there some agreement reached with Mr. Mervin prior to this being undertaken that no man who refused—no ACL employees who refused FEC interchange would be fired? A. No written agreement.

Q. Did you ever threaten to close down the whole ACL operation or the whole Moncrief operation? A. No, sir.

Q. Has any ACL employee been instructed not to work? A. No, sir.

Q. Have these different men that have been relieved requested each day to mark back up for work? A. Yes, sir.

Q. What percentage of the freight movement to and from the FEC from the Jacksonville Gateway comes over ACL? A. According to Mr. Mervin, approximately 60%.

Q. And how much from Seaboard? A. Approximately 30%.

Q. How much from Southern? [135] A. 10%.

The Court: What was the 60% figure?

Mr. Milledge: ACL.

The Witness: ACL.

Q. When were the men out at the employees' entrance of ACL, when were the men carrying signs? When were they

out there? A. 2:20 P.M. Sunday, April the 23rd was the initial—

Q. Let me—I will just lead you a little bit here.

Were they out there continuously around the clock? A. No, sir, only during the shift change hours from 6:00 A.M. to 8:00 A.M.; 2:00 P.M. to 4:00 P.M. and 10:00 P.M. to 12:00 midnight.

Q. Now, were you out there during most of the time when these men were out there carrying the signs? A. Yes, sir.

Q. Was their conduct in all respects peaceful? A. Yes, sir.

Q. Did any ACL employees turn around and go home? A. No, sir.

Q. Did they all go in to work? A. Yes, sir.

[136] Mr. Milledge: That seems to be all I've got.

[139]

Redirect Examination by Mr. Milledge:

Q. Let me go back to Seaboard. Prior to March 12th, did those roads, Seaboard and Southern, move mixed cuts, FEC and destined for other carriers in mixed batches across Stockton and McQuade Streets? A. Yes, sir.

Q. Did they segregate that traffic as of March 13th and move it only in solid blocks across? A. Yes, sir.

Q. When Seaboard is coming across for something [140] going to ACL, do you picket that? A. No, sir.

Q. In your discussions with Mr. Mervin—strike that. If ACL interchanged with FEC in the Jacksonville Terminal Yard, would your—could you picket at McQuade Street and have the same effect? A. No, sir.

Q. Well, under its present operation you couldn't; is that right? A. Right.

Q. Did you ask Mr. Mervin to make arrangements to have interchanges made between FEC and ACL in the Jacksonville Terminal and keep the FEC engines from coming all the way in Moncrief? A. Yes, sir.

Q. Did he agree or refuse? A. He refused.

Q. Did you ask him to put pickets within Moncrief Yard at the northern end of B Yard and H Yard to picket movement, FEC movement from those yards into the rest of the Moncrief Yard? A. Yes, sir.

Q. Did he agree or refuse? A. Refused.

[141] Q. All right. Did you ask him to segregate traffic up in Waycross so that when it came across the Kings Road crossing that it would be solid FEC and solid non-FEC? A. Yes, sir.

Q. So if you picketed that Kings Road crossing, you would picket just FEC traffic? A. Yes, sir.

Q. Did he agree or refuse? A. He refused.

[168]

CHARLES E. MERVIN, JR., having been produced and first duly sworn as a witness on behalf of defendants, testified as follows:

Direct Examination by Mr. Milledge:

Q. Would you state your name, sir? A. My name is Charles E. Mervin, Jr.

Q. And do you hold an official capacity with the Atlantic Coast Line Railroad? A. Yes. I am director of personnel for Atlantic Coast Line.

Q. For how long have you held that position, sir? A. Since February 1st, 1966.

Q. Did you participate in the decision this week, sir, to relieve from further duty temporarily those of your employees who refused to move FEC traffic? A. I was aware of it; yes, sir.

Q. Do you know why the decision was made to relieve them rather than just put them aside for the moment while a supervisor made the move? A. Yes, sir.

Q. Why was that? [169] A. Because I understood that these men were failing to carry out instructions and in effect refusing duty.

Q. So that the decision was made to relieve them from further duty rather than just leave them out there and put them back on the train, back on the engine as soon as the particular FEC cars had been moved? A. They were relieved temporarily for the matter to be considered to determine what, if any, action would be taken by the company.

Q. Now, starting about Thursday you didn't relieve all the men; you left some of them out there? A. As far as I know any of them who refused when instructed to perform their duties were relieved.

Q. You don't know about the change of policy starting about Thursday in which the supervisors would make the FEC movement or FEC traffic and then the men put back on the engines? A. Well, I understood that this was one thing that was considered, that the supervisory people would handle from interchange tracks to classification and that some movements were made like that; yes, sir.

Q. Now, back starting on March 11th, did you have a conference with Mr. Sims about the activity of FEC striking engineers? [170] A. Well, of course, I had several meetings and discussions with Mr. Sims and I believe I had one around March the 11th or 12th, somewhere in there.

Q. Now, in those meetings with him, was it discussed about keeping FEC engines out of your Moncrief Yard?

A. No, not of keeping FEC engines as such out of Moncrief; not specifically so, not that I recall.

Q. Were there discussions of which you were a part about classifying your traffic up North or somewhere else so they'd come down South solid in FEC cuts? A. There was some brief discussion about that; yes, sir.

Q. It was the decision of the ACL management not to do that? A. Yes, because this wasn't practical and could possibly have been illegal.

Q. Was there a discussion about permitting pickets to go within Moncrief Yard, picket where the stuff moved up, the cars moved up from H Yard up into C Yard? A. You mean was there some discussion with me to get—some conferences to permit the FEC pickets to come up into Moncrief Yard?

Q. Yes. A. I am not real sure, Mr. Milledge. It seems to [171] me there was some idea advanced, but this was just so ridiculous that I couldn't consider it.

Q. Well, you refused or the management refused? A. I don't even think it was seriously considered at all.

Q. That was turned down out of hand, you might say? A. Well, yes. It just wasn't seriously considered.

Q. Now, this picketing—this sign carrying operation or some form of picketing was discussed on numerous occasions between you and Mr. Sims, on several occasions perhaps is a better word? A. Yes, sir; that possibility was discussed.

Q. And did you ask him to postpone it at different times? A. I didn't ask him particularly to postpone it. Our discussions were along the line that they would postpone it pending consideration of some suggestions and ideas which were advanced by Mr. Sims.

Q. And some suggestions by you, too, were they not? A. The only suggestion that I advanced was that the matter be deferred as much as possible and they try to avoid

that, if at all possible. I made no specific suggestions regarding the operation that I recall.

[176]

Mr. Smith: We suggest that had the Federal law, substantive law preempted this area, that the Federal Court would not have [177] remanded this to this Court if it appeared from the face of the complaint setting forth the facts that have been proved to the Court that there was indeed any grounds on which the State Court was precluded from acting.

[185]

• • • The Norris-LaGuardia Act, however, clearly applied only to Federal Court, and if the Court will consider the order of remand, there is a citation to Moore's authority, wherein Mr. Moore says that the [186] better rule, and this is what we argued to Judge McRae, is if there is no jurisdiction to grant relief, then the matter is remanded to the State Court to determine whether or not it is subject to relief in the State Court.

[223]

Mr. Smith: Thirdly, if the railway had a major or minor dispute and all that, the question of the Norris-LaGuardia Act and the decisions of the court under the Clayton Act inasmuch as there is no finding in here that the activity is legal under Florida law. There is a reference to that Statute that extends over several lines, and it first starts out with "No restraint or injunction" which seems to be what the court was interested in, because had it been going on into the legality or illegality, it would never have gotten to a jurisdictional—because it could

have been done under the Clayton Act and it never would have been remanded. As Mr. Milledge argued to Judge McRae, the court should retain jurisdiction if it was finding substantive law under the Clayton Act, and the free speech has been raised before, up before the First District, the steelworkers, discussed on 27 and on 44, 45 and 46, and we show that the Thornhill case has been completely emasculated by later decisions of the Supreme [224] Court.

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IN THE
CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT

IN AND FOR DUVAL COUNTY, FLORIDA,

Case No. 673536

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood; and G. Q. RUTLAND, individually and as a member of said Brotherhood,

Defendants.

Order for Temporary Injunction

(Filed May 3, 1967)

This cause came on to be heard upon plaintiff's verified complaint and upon plaintiff's prayer for a temporary injunction. The Court has considered the evidence in support of plaintiff's prayer for a temporary injunction and has considered the arguments of counsel. The Court finds as follows:

1. This action arises under the Constitution and Laws of the State of Florida, including the Declaration of Rights of the Florida Constitution; the Florida Restraint of Trade Laws, Chapter 542, Florida Statutes; the Florida Labor Laws, Chapter 447, Florida Statutes; and the Florida Transportation Act, Chapter 350, Florida Statutes. This court has jurisdiction of the subject matter and of the parties hereto.

2. Plaintiff, Atlantic Coast Line Railroad Company (hereinafter "ACL") is a common carrier authorized to do business in the State of Florida. Plaintiff as a common carrier serves numerous communities within the State of Florida, in addition to the City of Jacksonville and County of Duval and provides extensive passenger, mail, freight, including perishable freight, bill and express laden services to these communities. Plaintiff is further obligated under the aforesaid Florida Transportation Act to provide interchange services with various connecting railroad common carriers including the Florida East Coast Railway Company (hereinafter "FEC").

3. Defendant Brotherhood of Locomotive Engineers (hereinafter "BLE") is an unincorporated labor organization composed solely of members who are employees of railroad carriers subject to the Railway Labor Act, 45 U.S.C. §151, et seq. Defendant J. E. Sims is Assistant Grand Chief Engineer of the BLE, and by his own admission is in charge of promoting the acts hereinafter enjoined. The other defendants, individually and as agents of defendant brotherhood, have participated in active concert with defendant Sims. The members of the BLE employed by the FEC are on strike against the FEC. The ACL has valid labor agreements between its employees represented by their respec-

tive Brotherhoods, including defendant BLE, which are presently in full force and effect. There is no labor dispute of any kind between ACL and its employees which gives rise to the acts hereby enjoined. There is no labor agreement or labor dispute between ACL and the employees of FEC.

4. On Sunday, the 23rd day of April 1967, the BLE and the Local Lodge Division 823 of BLE by and through their officers and members, including individual defendants J. D. Sims, J. E. Eason, H. M. Sawyer, W. K. Morris and G. Q. Rutland, proceeded to picket and patrol at employee entrances to the property and interchange yard of the ACL in Duval County, Florida, known as Moncrief Yard and to disburse pamphlets to the ACL employees going to work through said entrances. The express and manifest intent of the defendants in distributing the pamphlets was to induce the employees of ACL in Moncrief Yard to refuse to handle, move or carry out their regularly assigned duties with regard to any ACL railroad car which had arrived in Moncrief Yard from the FEC or which had arrived in Moncrief Yard destined to the FEC. Defendants also seek to induce and coerce plaintiff to refuse interchange with the FEC and thus to prevent competition in transportation of commodities by FEC. The avowed purpose of the picketing is to cause the plaintiff and its employees to cease furnishing interchange to the FEC and thus to bring the operation of the FEC to a halt; the result of the picketing is considerably more broad, as stated below. The intent and purpose of this picketing and distribution of pamphlets was not lawfully to advertise or to advise either the public in general or the employees of the ACL of the BLE labor dispute with FEC but was to accomplish various purposes,

described below, which are in violation of the law of the State of Florida.

5. As a result of the inducement and coercion by the BLE and other defendants through picketing of the ACL employee entrances and through the distribution of pamphlets, the employees of ACL in Moncrief Yard have refused to handle, move or interchange any ACL railroad car arriving from or destined to the FEC, which refusal has had and will have the following results:

(a) Disruption of the interchange operations of the ACL in Moncrief Yard;

(b) Effective blockade of railroad cars destined to points within and without the County of Duval and State of Florida;

(c) Stoppage of cars handling perishable goods and United States mail;

(d) Inability to properly serve shippers within and without the County of Duval due to interference with traffic patterns and schedules and due to the necessity of using supervisory personnel from other points on the ACL to operate Moncrief Yard;

(e) Interference with the effective interchange of freight to and from other connecting railroad common carriers, including the Jacksonville Terminal Company, the Seaboard Air Line Railroad Company, Southern Railway System, FEC and others;

(f) Substantial loss of profits and revenue to ACL by diversion of traffic and loss of traffic.

The picketing and other aforementioned activities of defendants, if resumed, will cause plaintiff irreparable harm

for which no adequate remedy at law exists and will adversely affect all of the people who are serviced by and do business with plaintiff and all railways served by plaintiff. It would further adversely affect large economic areas of the State of Florida which rely upon rail service by plaintiff. Far greater injury will be inflicted upon plaintiff, employees of plaintiff, and citizens of the State of Florida by denial of plaintiff's application for temporary injunction than will result to defendants by granting such relief.

6. The decision of this Court is not made upon the basis of violence. There is no evidence in the record of any violence or threat of violence involved in the picketing.

7. The picketing and distribution of pamphlets by the defendants is illegal under the law of the State of Florida for the following reasons:

(a) The defendants' acts constitute coercive pressure on the ACL and its employees which is unlawful and contrary to the established public policy of the State of Florida.

(b) The picketing is outside the area of the struck industry, the FEC, in violation of the aforesaid Florida Labor Law, and is in the nature of a secondary boycott.

(c) The defendants seek to force plaintiff to violate its statutory duties under the aforesaid Florida Transportation Act to provide service to its various shippers and to provide interchange service to the FEC, which is illegal not only under the Florida Transportation Act, but also under the aforesaid Florida Restraint of Trade Laws;

(d) The inducements and coercions of defendants constitute a tortious interference with the contractual

relationship between ACL and its employees and between ACL and its various shippers;

(e) Said inducements and coercions of defendants constitute an unwarranted and unconstitutional interference with the business of the ACL and constitute a tortious interference with the prospective business advantage of ACL; and

(f) Said actions operate as a restraint upon trade in violation of the Florida Restraint of Trade Laws and seek to compel ACL and its employees to enter into a combination with defendants to prevent competition in transportation of merchandise, produce and commodities by FEC.

IT IS, THEREFORE,

ORDERED that the defendants, Brotherhood of Locomotive Engineers, Local Lodge Division 823 of the Brotherhood of Locomotive Engineers, J. E. Eason, J. D. Sims, H. M. Sawyer, W. K. Morris, G. Q. Rutland, individually, and their officers, agents, servants, employees, representatives and members, when said members are acting as officers, agents, servants, employees or representatives of defendants, and all other persons acting at the direction of or in concert or participation with defendants, are temporarily enjoined from:

1. Picketing the property owned and operated by plaintiff in Duval County, Florida, known as Moncrief Yard.

2. Causing, directing, authorizing, recommending, sanctioning or participating in the patrolling, picketing or blockading of entrances or exits used by employees of plaintiff in connection with their work or in connection with plain-

tiff's land, buildings, facilities or other property owned or controlled by plaintiff in Duval County, Florida, known as Moncrief Yard.

3. Causing, directing, recommending, or inducing or attempting to induce the employees of plaintiff who report to work at the property owned and controlled by plaintiff known as Moncrief Yard, to cease performing any of their regularly assigned duties of their employment, including specifically the distribution of literature to plaintiff's employees recommending, causing, directing or inducing plaintiff's employees to cease performing such duties.

4. Interfering in any way with the operation of plaintiff's property located in Duval County, Florida, known as Moncrief Yard.

The defendant labor organizations, their appropriate officers, agents, servants and employees and the other defendants herein are directed and mandatorily enjoined to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendants' officers, agents or members, asking or inducing any of plaintiff's employees working on plaintiff's property known as Moncrief Yard not to carry out certain of their regularly assigned duties in connection with the operation of said Moncrief Yard by the plaintiff.

This injunction is limited to the picketing and other aforementioned actions of defendants arising out of defendants' existing disputes with the Florida East Coast Railway Company.

This temporary injunction shall become effective upon the filing by plaintiff and acceptance by the Clerk of this Court of a good and sufficient bond in favor of defendants in the amount of Twenty-Five Thousand (\$25,000) Dollars.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 3d day of May, 1967.

/s/ CHARLES A. LUCKIE
Circuit Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
Case No. 67-418-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,
vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood, and G. W. RUTLAND, individually and as a member of said Brotherhood,
Defendants.

Petition for Removal

(Filed May 23, 1967)

To the Judges of the United States District Court for the Middle District of Florida:

The Petition of Brotherhood of Locomotive Engineers; Local Lodge Division 823 of the Brotherhood of Locomotive Engineers; J. E. Eason; J. D. Sims, H. M. Sawyer; W. K. Morris and G. Q. Rutland, respectfully shows:

1. On the 27th day of April, 1967, an action was commenced against Petitioners in the Circuit Court, in and for the Fourth Judicial Circuit of Florida, styled *Atlantic Coast Line Railroad Company, a corporation, Plaintiff, vs. Brotherhood of Locomotive Engineers, et al., Defendants*, Case No. 67-3536, by the filing of a complaint against petitioners, a copy of which is attached hereto. True copies of all process, pleadings and orders filed in said cause are attached hereto.

2. On April 27, 1967, petitioners removed said cause to this Honorable Court and on the same date hearing was held on respondent's Motion to Remand to the state court. This Court entered its order on that date remanding the cause to the state court. Case No. 67-338-Civ-J.

3. Upon remand on May 1, 1967, the state court took testimony substantially identical to that taken by this Court in Case No. 67-335-Civ-J. *Atlantic Coast Line R.R. Co. vs. Brotherhood of Locomotive Engineers, et al.*

4. On the 3rd day of May, 1967, an order was entered in said state court action entitled "Order for Temporary Injunction" against petitioners, a copy of which order is attached hereto.

5. The action herein sought to be removed is a civil action of which it now appears that this Court has original jurisdiction under the provisions of 28 USC, Sections 1331, 1332 and 1337. The cause is one over which the Court has subject matter jurisdiction, and such jurisdiction is not precluded by the applicability of the Norris-LaGuardia Act. 29 U.S.C. §101 et seq. *Avco Corp. vs. IAM Aero Lodge 735*, 35 U. S. Law Week 2666 (6th Cir. May 2, 1967; reported in Law Week issue dated May 16, 1967).

6. The cause is one which may be removed to this Court by Petitioners, pursuant to 28 USC §1441, in that it appears from the complaint, together with the subsequent "Order for Temporary Injunction," that this is a civil action arising under one or more of the following Acts of Congress regulating Commerce: Railway Labor Act, 45 U.S.C. §151 et seq.; Interstate Commerce Act, 49 U.S.C. §1 et seq. In addition, the matters in controversy arise under the Constitution and laws of the United States, and further the citizenship of the plaintiff is diverse from that of all defendants, and the matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs.

7. Petitioners file herewith a bond with good and sufficient surety conditioned, as provided by Title 28, United States Code, Section 1446 (d), that they will pay all costs and disbursements incurred by reason of the removal proceedings hereby brought should it be determined that this action is not removable or is improperly removed.

WHEREFORE, Petitioners pray that the above action now pending against them in the Circuit Court of the Fourth Judicial Circuit of Florida be removed therefrom to this Court.

RUTLEDGE AND MILLEDGE

Attorneys for Defendants

601 Flagler Federal Bldg.

Miami, Florida

ALLAN MILLEDGE

RICHARD L. HORN

[Jurat and Certificate of Service omitted in printing.]

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
No. 67-418-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

—VS.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood, and G. Q. RUTLAND, individually and as a member of said Brotherhood,

Defendants.

Motion to Remand
(Filed May 29, 1967)

Plaintiff, Atlantic Coast Line Railroad Company, moves for the entry of an order remanding this action to the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, from which it was improperly removed, and plaintiff states the following grounds for its motion:

1. Removal of this action is, improper under 28 U.S.C., Sec. 1441.

2. Removal of this action is improper under 28 U.S.C., Sec. 1446(b). The Petition for Removal filed herein is untimely.

3. Plaintiff's action is not one of which this Court has original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States.

4. Plaintiff's action is not of which this Court has original jurisdiction under 28 U.S.C., Sections 1331, 1332 or 1337, or under any law of the United States regulating trade or commerce.

5. The testimony introduced before the state court differed in several material respects from that taken by this Court in Case No. 67-335-Civ-J.

6. The Petition for Removal does not sufficiently allege or establish diversity of citizenship. Certain of the defendants are citizens of the State of Florida. The Petition for Removal based on diversity of citizenship is untimely.

7. By order dated April 27, 1967, in Case No. 67-338-Civ-J remanding this identical action to state court, this Court decided adverse to petitioners all issues raised by the Petition for Removal filed herein. No new or different fact, order, motion, or pleading has occurred or been entered since date of said prior order of Court from which jurisdiction in this Court now appears.

ROGERS, TOWERS, BAILEY, JONES & GAY

By DAVID M. FOSTER

1300 Florida Title Building

Jacksonville, Florida 32202

[Certificate of Service omitted in printing.]

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-418-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

—VS.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,
Defendants.

Order

(Filed July 6, 1967)

After due notice and hearing, it is

ORDERED that Plaintiff's Motion to Remand is granted, and this cause is remanded to the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida. A certified copy of this order shall be mailed by the Clerk of this Court to the Clerk of said Circuit Court.

DONE AND ORDERED at Jacksonville, Florida, this 6th day of July, 1967.

WM. A. McRAE, JR.
Judge

IN THE
CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA
Case No. 67-3536

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Plaintiff,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; J. E. EASON, individually and as an official of
said Brotherhood; J. D. SIMS, individually and as an
official of said Brotherhood; H. M. SAWYER, individ-
ually and as a member of said Brotherhood; W. K.
MORRIS, individually and as a member of said Brother-
hood; and G. Q. RUTLAND, individually and as a member
of said Brotherhood.

**Motion to Dissolve Order for Temporary
Injunction and to Dismiss Case**

(Filed April 25, 1969)

Come now the defendants, Brotherhood of Locomotive
Engineers, et al., by and through their undersigned coun-
sel, pursuant to Florida Rule of Civil Procedure 1.610(c),
and move the Court for an Order dissolving the Order
for Temporary Injunction entered herein on May 3, 1967,
and dismissing the cause, and for grounds would show:

1. The Order for Temporary Injunction entered herein on May 3, 1967, is based solely upon the application of Florida State law to the conduct of a party which has unsuccessfully exhausted the procedures of the Railway Labor Act for resolution of a major dispute.

2. On March 25, 1969 the United States Supreme Court rendered its opinion in *Brotherhood of Railroad Trainmen et al. vs. Jacksonville Terminal Company*, — U.S. —, 37 LW 4247 (1969), reversing the judgment of the Duval County Circuit Court, Case No. 66-2941-E, and that of the District Court of Appeal of Florida, First District, reported at 201 So. 2d 253 (1967).

The *Trainmen* decision is squarely controlling upon this case which is identical in all material respects. A copy of the opinion of the United States Supreme Court is attached hereto as Exhibit "A". The pertinent holding of the Court is as follows:

"In short, we have been furnished by Congress neither usable standards nor access to administrative expertise in a situation where both are required. In these circumstances there is no really satisfactory judicial solution to the problem at hand. However, we conclude that the least unsatisfactory one is to allow parties who have unsuccessfully exhausted the Railway Labor Act's procedures for resolution of a major dispute to employ the full range of whatever peaceful economic power they can muster, so long as its use conflicts with no other obligation imposed by federal law. Hence, until Congress acts, picketing—whether characterized as primary or secondary—must be deemed conduct protected against state proscription." 47 LW at 4254 (March 25, 1969) Emphasis added.

WHEREFORE, defendants move the Court for an Order dissolving the Order for Temporary Injunction and dismissing the cause.

MIDDLEGE AND HORN,
Attorneys for Defendants,
150 S. E. Second Avenue
Miami, Florida 33131

By RICHARD L. HORN

[Exhibit and Certificate of Service omitted in printing.]

IN THE
CIRCUIT COURT OF THE FOURTH
JUDICIAL CIRCUIT

IN AND FOR DUVAL COUNTY, FLORIDA

Case No. 67-3536

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE
ENGINEERS; J. E. EASON, individually and as an official of
said Brotherhood; J. D. SIMS, individually and as an
official of said Brotherhood; H. M. SAWYER, individually
and as a member of said Brotherhood; W. K. MORRIS,
individually and as a member of said Brotherhood; and
G. W. RUTLAND, individually and as a member of said
Brotherhood,

Defendants.

Motion to Assess Costs, Damages
and Attorneys' Fees

(Filed April 25, 1969)

COME NOW the defendants, Brotherhood of Locomotive
Engineers, et al., pursuant to Florida Statute 60.07, and
move the Court for an Order assessing costs, damages and
attorneys' fees under the Injunction Bond posted by plain-

tiff, as a result of the wrongful issuance of the Order for Temporary Injunction, dated May 3, 1967.

MILLEDGE AND HORN,

Attorneys for Defendants,

150 S. E. Second Avenue

Miami, Florida 33131

By RICHARD L. HORN

[Certificate of Service omitted in printing.]

HANDWRITTEN ANSWER—MAY 23, 1969

IN THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 67-335-CIV-J

ATLANTIC COAST LINE
RAILROAD COMPANY,
a Corporation,

Plaintiff

- vs -

BROTHERHOOD OF
LOCOMOTIVE ENGINEERS,
et al.

Defendants

ANSWER

Come now the defendants
Brotherhood of Locomotive
Engineers and J. D. Sims, and
Joe Answer to the Complaint
say:

FIRST DEFENSE

The Complaint fails to
41

state a claim upon which relief can be granted.

SECOND DEFENSE

The Norris-LaGuardia Act, 29 U.S.C. § 101 et seq., deprives this Court of the power to grant injunctive relief.

THIRD DEFENSE

The conduct alleged in the Complaint is legal under controlling federal law. Railway Labor Act, 45 U.S.C. § 151 et seq.; Clayton Act, 29 U.S.C. § 52.

As and for answer
the complaint defendants say:

1. The allegations of
paragraph 1 are admitted.

2. The allegations of
fact contained in paragraph
2 are admitted, however
all conclusions of law in
said paragraph are denied.

3. The allegations of
paragraph 3 are admitted.

4. The allegations in
the first and second sentences
of paragraph 4 are admitted.

All the remaining allegations
are denied.

5. The allegations of paragraph 5 of the Complaint are admitted

6. The allegations of paragraphs 6 through 11 of the Complaint are denied.

7. All allegations of the Complaint not specifically admitted are denied.

MILLEDGE AND NEWMAN
ATTORNEYS for Defendants
1300 Northeast Highway 11
Miami, Florida 33131

Richard L. Horn

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer was
(4)

delivered this 23rd day of
May 1969 to Rogers, Towers,
Bailey Jones and Gay, 137L
Floor Florida Title Building,
Jacksonville, Florida.

Richard L. Hearn

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
Case No. 69-351-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE
ENGINEERS; J. E. EASON, individually and as official of
said Brotherhood; H. M. SAWYER, individually and as a
member of said Brotherhood; W. K. MORRIS, individually
and as a member of said Brotherhood, and G. Q. RUT-
LAND, member of said Brotherhood and G. Q. RUTLAND,
individually and as a member of said Brotherhood,

Defendants.

Petition for Removal

(Filed May 23, 1969)

*To the Judges of the United States District Court for the
Middle District of Florida:*

The Petition of Brotherhood of Locomotive Engineers;
Local Lodge Division 823 of the Brotherhood of Locomo-
tive Engineers; J. E. Eason; J. D. Sims; H. M. Sawyer;
W. K. Morris and G. Q. Rutland; respectfully shows:

1. On the 27th day of April, 1967, an action was commenced against Petitioners in the Circuit Court, in and for the Fourth Judicial Circuit of Florida, styled *Atlantic Coast Line Railroad Company, a corporation, Plaintiff, vs. Brotherhood of Locomotive Engineers, et al., Defendants*, Case No. 67-3536, by the filing of a complaint against petitioners, a copy of which is attached hereto. True copies of all process, pleadings and orders filed in said cause are attached hereto.

2. On April 27, 1967, petitioners removed said cause to this Honorable Court and on the same date hearing was held on respondent's Motion to Remand to the state court. This Court entered its order on that date remanding the cause to the state court. Case No. 67-338-Civ-J.

3. Upon remand on May 1, 1967, the state court took testimony substantially identical to that taken by this Court in Case No. 67-335-Civ-J. *Atlantic Coast Line R.R. Co. vs. Brotherhood of Locomotive Engineers, et al.*

4. On the 3rd day of May, 1967, an order was entered in said state court action entitled "Order for Temporary Injunction" against petitioners, a copy of which order is attached hereto.

5. On May 22, 1967 petitioners again removed said cause to this Honorable Court. On July 6, 1967 this Court entered its Order again remanding the cause to the state court. Case No. 67-418-Civ-J.

6. On April 25, 1969, after the decision of the United States Supreme Court in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, — U.S. —, 89 S. Ct.

1109 (decided March 25, 1969; rehearing denied May 5, 1969) petitioner Brotherhood of Locomotive Engineers moved for the dissolution of the "Order for Temporary Injunction" in the state court.

7. By a statement of counsel in open Court at the hearing on Petitioner's Motion to Dissolve on May 23, 1969, the respondent for the first time disavowed its reliance *solely* upon state law and placed reliance upon federal law in the state court action to support the injunction, thus making it first ascertainable that the case was one which was or had become removable under 28 U.S.C. §1446(b).

8. The action herein sought to be removed is a civil action of which it now appears for the first time that this Court has original jurisdiction under the provisions of 28 USC, Sections 1331 and 1337, in that it appears from the foregoing statement of counsel that this cause is a civil action arising under one or more of the following Acts of Congress regulating commerce: Railway Labor Act 45 U.S.C. §151 et seq.; Clayton Act, 29 U.S.C. §52; Interstate Commerce Act, 49 U.S.C. §1 et seq. In addition, the matters in controversy arise under the Constitution and laws of the United States, and the matter in controversy exceeds the sum or value of \$10,000.00 exclusive of interest and costs.

9. The cause is one over which the Court has subject matter jurisdiction, and such jurisdiction is not precluded by the applicability of the Norris-LaGuardia Act. 29 U.S.C. §101 et seq. *Avco Corp. vs. IAM Aero Lodge 735*, 390 U.S. 557, 88 S. Ct. 1235 (1968).

10. Petitioners file herewith a bond with good and sufficient surety conditioned, as provided by Title 28, United States Code, Section 1446 (d), that they will pay all costs and disbursements incurred by reason of the removal proceedings hereby brought should it be determined that this action is not removable or is improperly removed.

WHEREFORE, Petitioners pray that the above action now pending against them in the Circuit Court of the Fourth Judicial Circuit of Florida be removed therefrom to this Court.

MILLEDGE AND HORN,
Attorneys for Defendants
150 S. E. Second Avenue
Miami, Florida 33131

By **ALLAN MILLEDGE**
Allan Milledge

[Jurat and Certificate of Service omitted in printing.]

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
Case No. 69-351-Civ-J.

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,

Defendants.

Motion to Remand
(Filed May 27, 1969)

Plaintiff, Atlantic Coast Line Railroad Company, moves for an order remanding this action to the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, from which it was improperly removed by defendants, and plaintiff states the following grounds for its motion:

1. Removal of this action is improper under 28 U.S.C., §1441.
2. Removal of this action is improper under 28 U.S.C., §1446(b).

3. Plaintiff's action is not one of which this Court has an original jurisdiction founded upon a claim or right arising under the Constitution, treaties or laws of the United States.

4. Plaintiff's action is not one of which this Court has original jurisdiction under 28 U.S.C., §§1331, 1332 or 1337 or under any law of the United States regulating trade or commerce.

5. By Order dated April 27, 1967, in Case No. 67-338-Civ-J and by Order dated July 6, 1967, in Case No. 67-418-Civ-J, this Court remanded this identical action to State Court and decided adverse to petitioners on all issues raised by the Petition for Removal now before the Court.

6. At the stage in this case when the subject Petition for Removal was filed, no new or different fact, order, motion or pleading had occurred or had been entered into since the date of the prior orders remanding this case to State Court from which jurisdiction in this Court now appears.

7. As appears from the Excerpt of Proceedings attached to the Stipulation of the parties filed herein, from said Stipulation and from the Affidavit in Support of Motion to Remand, the following facts show that defendants' Motion for Removal is improper:

(a) At a hearing before the Honorable Charles A. Luckie in *Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers, et al.*, No. 67-3536, on May 23, 1969, the plaintiff argued in the alternative in defense to defendants' Motion to Dissolve the Temporary Injunction previously entered by Judge Luckie, that the Railway Labor

Act if applied in accordance with defendants' position was unconstitutional under the United States Constitution.

(b) After discussions on the record concerning the possibility of removal of this cause and after a short recess, plaintiff in open Court withdrew any arguments under the United States Constitution and announced that they waived their right to raise such arguments subsequently at either the trial or appellate level in this case.

(c) Defendants filed the Petition for Removal here in question subsequent to the withdrawal by plaintiff of any argument under the United States Constitution.

8. This case does not involve the same legal issues as those which were before the Court in Case No. 67-335-Civ-J. The case here at this stage in the pleadings involves the legality and enjoinability of defendants' conduct under the laws of the State of Florida; whereas, Case No. 67-335-Civ-J involved those legal issues under Federal law.

Dated this 27th day of May, 1969.

ROGERS, TOWERS, BAILEY, JONES & GAY

By FRANK X. FRIEDMANN, JR.

Frank X. Friedmann, Jr.

1300 Florida Title Building

Jacksonville, Florida

Attorneys for Plaintiff

[Certificate of Service omitted in printing.]

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 69-351-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation;*Plaintiff,**v.*

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,

Defendants.

Order

(Filed May 28, 1969)

After due notice and hearing, it is

ORDERED:

Plaintiff's Motion to Remand is granted, and this action is remanded to the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida.

DONE AND ORDERED at Jacksonville, Florida, this 28th day of May, 1969.

WM. A. McRAE, JR.

Judge

**Extracts from Transcript of Proceedings on
Motion to Dissolve Injunction**

**IN THE
CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT**

IN AND FOR DUVAL COUNTY, FLORIDA

No. 67-3536

Division E

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

VS.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,

Defendants.

**STATE OF FLORIDA)
COUNTY OF DUVAL)**

A Hearing in the above-entitled matter was held before His Honor, Charles A. Luckie, Judge of the above Court, Thursday, May 29, 1969, at 2:00 p.m.

Appearances:

**DAVID M. FOSTER, Esq., FRANK FRIEDMANN, Jr., Esq.,
and JOHN B. CHANDLER, Jr., Esq., of the law firm of**

Rogers, Towers, Bailey, Jones & Gay, attorneys for plaintiff.

ALLAN MILLEDGE, Esq., and RICHARD HORN, Esq., of the law firm of Milledge & Horn, attorneys for defendants.

[29]

Mr. Foster: . . .

Now, obviously, in this opinion, which Your Honor has just gone through with Mr. Milledge very carefully, the Court based a great deal of reliance on the fact that the Jacksonville Terminal Company was an integral part of the [30] FEC operations, and we don't see how any Court could find that that is true as to the Moncrief Yard. We feel that the situation in a large part in the Terminal Company case is modeled on that conclusion.

[34]

Mr. Friedmann: . . .

First, I believe they are asking this Court to view the decision of the Supreme Court in *Trainmen versus Terminal Company* somewhat in the nature of a law review article to the extent that they spend some 10 or 12 pages discussing the Labor Management Relations Act, and discussing what is and what is not a common situs, and totally disregard that discussion and the conclusions they arrived at in this discussion.

Secondly, I believe they are asking this Court to believe or to hold that the present United States Supreme [35] Court believes or feels that it is incapable of making decisions in this area. I believe the history of the Court—

The Court: I don't believe I should go on record as giving my opinion of the Supreme Court.

Mr. Friedmann: All right, sir.

Secondly or thirdly, I think that the defendants are asking this Court to adopt what to us is a totally illogical position, and to adopt a position which I am sure this Court has never in its experience been faced with before, and that is that by inactivity the Congress of the United States has totally excluded the application of State law in the area.

The Court: Isn't that what this said?

Mr. Friedmann: Your Honor, I would respectfully submit that is not what the Court says if we carefully and closely examine the opinion, and if we make every section of that opinion mean something and have some purpose in arriving at the final conclusion, and with the Court's permission, I would submit and offer to this Court our opinion as to what the Supreme Court actually concluded, and the purpose of the various sections of this opinion in reaching that conclusion.

[40]

What the Supreme Court has in fact held up to this point in the decision is that the picketing of Terminal Company was common situs picketing under the docket of Moore Dry Dock and I do not believe there can be any question that the Court wasted its explanation of common situs picketing, or know to that—know what they in fact concluded.

[41] I think it is also clear that the Supreme Court, as the defendants have argued throughout this case, found that FEC and Terminal Company were related corporations. As we argued before, I believe the Supreme Court viewed the Terminal Company as a subsidiary of the FEC, who was involved in day-to-day operations of that railroad carrier.

The conclusion that the Terminal Company's property is a common situs, and the conclusion that the Terminal Company is related to the FEC, we believe led the Supreme Court to find that in fact the Terminal Company was a party or party to the FEC Brotherhood dispute, and that being related they had in fact had the benefit of the Railway Labor Act procedures, and that therefore they were subject to be picketed by the striking employees of FEC.

[44]

To determine whether or not the Seaboard Coast Line or the ACL on the date of this Court's temporary injunction was a party to the dispute, we only have to make reference to the defendants' argument wherein the defendants candidly admit we have no availability to the Railway Labor Act procedure. We are in no way involved in this dispute between the FEC and its employees, and as Mr. Foster has pointed out, we are not factually involved in the day-to-day operation of FEC. We are not Terminal Company. Moncrief Yard is not the Terminal Company, and we are or we respectfully submit we are in no way a party to this dispute, and, therefore, the reason the Supreme Court does not apply to this in the doctrine of Giboney. A well-reasoned opinion we would submit does apply, and in this Court can still prohibit conspiracy and restraint of the trade in the territorial boundaries of the State of Florida. That this Court can [45] still apply the mandate of Florida law that this activity is illegal.

[47]

Mr. Milledge:

Now, Mr. Foster, has said that a Court could not find that Moncrief Yard was a common situs, or I forget the

exact terms, but the day-to-day operations. I don't want to misquote him, exactly what he says.

In any event, in Judge McRae's original order denying the Federal injunction in Paragraph 5 of his findings of fact the use of ACL's Moncrief Yard by FEC [48] to receive and deliver freight is an integral and necessary part of FEC's operations.

[52]

Mr. Friedmann: I might follow that with one very short point, Your Honor, merely by reading again what Mr. Mill-edge just read to this Court, and I quote that in the absence of any other viable guidelines we have resorted to the LMRA for assistance in mapping out very general boundaries of self-help under the Railway Labor Act.

The Supreme Court in looking to Labor Management Relations Act found Terminal Company to be a common situs, and therefore to be a party to this dispute.

We respectfully submit that in mapping out the very [53] general boundaries of self-help under BLE that the Supreme Court did in fact draw the boundary at Terminal Company, and that those very general guidelines do not apply to picketing of Moncrief Yard owned by Seaboard Coast Line.

Letter Opinion of Luckie, J.

June 3, 1969

Rogers, Towers, Bailey, Jones & Gay, Esquires
1300 Florida Title Building
Jacksonville, Fla. 32202

Attn: David M. Foster

Gentlemen:

Re: Atlantic Coast Line
Railroad Company vs.
B.L.E., etc.

I find it very difficult to reconcile the final conclusion made by the Court in the case of the Brotherhood of Railway Trainmen vs. Jacksonville Terminal Company; and impossible to do so unless the conclusion is confined to the particular case then before that Court. The court concludes its opinion by making the flat statement that, "• • • until Congress acts, picketing—whether primary or secondary—must be deemed conduct protected against state proscription." But it is quite apparent from the remainder of the opinion that the Court did not intend to say that ALL secondary picketing is "conduct protected against state proscription."

The opinion contains the following statements: "We are presented, then, with the problem of delineating the area of labor combat protected against infringement by the States." It further states: "It is difficult to formulate many generalizations governing common situs picketing, but it is clear that secondary employers are not necessarily

protected against picketing aimed directly at their employees." And, " . . . to condemn all of the petitioners' picketing which carries any 'secondary' implications would be to paint with much too broad a brush." Also, " . . . the Railway Labor Act permits employees to engage in SOME forms of self-help, free from state interference, IBID." further, " . . . it cannot categorically be said that ALL picketing carrying 'secondary' implications is prohibited, Part VII, SUPRA," (Emphasis by underscoring supplied; Court emphasis by Capitalization.)

Therefore, the Court having plainly indicated that some forms of secondary picketing may be prohibited by the States, I cannot reconcile the flat statement first quoted in this letter with the remaining statements in the opinion unless I conclude that the flat statement made by the Court related only to the facts before it in that particular case. Consequently, the motion to dissolve the injunction will be denied and, at the request of counsel for the Defendants, the injunction will be made permanent. Please consult Allan Milledge and prepare such Order.

Very truly yours,

CHARLES A. LUCKIE

CAL:bs

cc: Milledge and Horn, Esquires

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

Case No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,

Defendants.

Motion for Preliminary Injunction

(Filed June 4, 1969)

COME NOW the defendants, Brotherhood of Locomotive Engineers, et al., and move the Court for a preliminary injunction enjoining the plaintiff, Atlantic Coast Line Railroad Company (merged predecessor of Seaboard Coast Line Railroad Company) its agents, servants, employees and attorneys and all persons in active concert and participation with them, pending the final hearing and determination of this action, from enforcing, giving effect to or availing themselves in any manner whatsoever of the benefits of the Order for Temporary Injunction that was entered on May 3, 1967 in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, being

numbered Case No. 67-3536, Division E, and for grounds would show:

1. On April 25, 1967 the plaintiff commenced this action by filing its Complaint in this Court seeking an injunction against the picketing activities of the defendants pursuant to their major dispute under the Railway Labor Act with the Florida East Coast Railway Company.

2. On April 26, 1967 this Court entered its Order Denying Application for Temporary Injunctive Relief, which Order made Findings of Fact and Conclusions of Law from the evidence, establishing the applicable federal law of this case.

In said Order, this Court expressly stated:

"1. This suit arises under the Railway Labor Act, 45 U.S.C. §151 et seq., and the Interstate Commerce Act, 49 U.S.C. §1 et seq. *This Court has jurisdiction of the case under 28 U.S.C. §1337.*"

3. Following the denial of injunctive relief by this Court, the plaintiff commenced suit in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, Case No. 67-3536, seeking the same injunctive relief but allegedly relying upon state law to obtain such relief.

4. On May 3, 1967 the state court entered its Order for Temporary Injunction enjoining the picketing activities of defendants as in violation of Florida state law.

5. The United States Supreme Court in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, —

U.S. —, 89 S. Ct. 1109 (decided March 25, 1969, rehearing denied May 5, 1969) established that the controlling federal law, in the circumstances of this case:

“ . . . is to allow parties who have unsuccessfully exhausted the Railway Labor Act's procedures for resolution of a major dispute to employ the full range of whatever peaceful economic power they can muster, so long as its use conflicts with no other obligation imposed by federal law. Hence, until Congress acts, picketing—whether characterized as primary or secondary—must be deemed conduct protected against state proscription.” 89 S. Ct. at 1123.

6. Although the United States Supreme Court has proscribed the application of state law in the circumstances of this case, and although this case remains pending before this Court on the issues of the application of federal law to this case, and although this Court by its Order of April 26, 1967, has concluded that it has jurisdiction of this case and has made binding determination of federal law, the defendants now seek to impeach the Findings of Fact and the Order of this Court by seeking to continue and give effect to the state court injunctive order.

7. This Court has jurisdiction to enter its injunction against the plaintiff as it is here necessary in aid of the Court's jurisdiction, and to protect and effectuate the judgment of this Court dated April 26, 1967. 28 U.S.C. §2283; *United Industrial Workers of the Seafarers International Union v. Board of Trustees of Galveston Wharves*, 400 F. 2d 320 (5th Cir. 1968); *Capital Service, Inc. v. NLRB*, 347 U.S. 501, 74 S. Ct. 699, 98 L. Ed. 887 (1954).

8. Unless restrained by the Court, plaintiff will seek to enforce and effectuate the state court injunction.

9. Such action by the plaintiff will result in continuing irreparable injury, loss and damage to the defendants, who have already been unlawfully denied the use of their peaceful economic weapons in their major dispute with the Florida East Coast Railway Company for two years.

WHEREFORE, defendants pray that the Court enter its Preliminary Injunction, enjoining the plaintiff, its agents, servants, employees and attorneys and all persons in active concert and participation with them, pending final hearing and determination of this action from enforcing, giving effect to or availing themselves in any manner of the benefits of the Order for Temporary Injunction dated May 3, 1967 of the Duval County Circuit Court in Case No. 67-3536.

MILLEDGE AND HORN,

Attorneys for Defendants,

1300 Northeast Airlines Building
150 S. E. Second Avenue
Miami, Florida 33131

By ALLAN MILLEDGE

[Jurat and Certificate of Service omitted in printing.]

UNITED STATES DISTRICT COURT**MIDDLE DISTRICT OF FLORIDA****JACKSONVILLE DIVISION****No. 67-335-Civ-J**

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,***Plaintiff,*****v.****BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; et al.,*****Defendants.***

Notice of Voluntary Dismissal**(Filed June 6, 1969)**

Plaintiff hereby gives notice that it voluntarily dis-
misses this action pursuant to Rule 41(a)(1), Federal
Rules of Civil Procedure.

Motion for Voluntary Dismissal

Plaintiff moves for an order dismissing this action
upon the voluntary motion of plaintiff pursuant to Rule
41(a)(2), Federal Rules of Civil Procedure.

ROGERS, TOWERS, BAILEY, JONES & GAY**By /s/ FRANK X. FRIEDMANN, JR.****Frank X. Friedmann, Jr.****1300 Florida Title Building****Jacksonville, Florida 32202**

ADAM G. ADAMS, II

ADAMS & ADAMS

Barnett Bank Building

Jacksonville, Florida 32202

JOHN S. COX

COX & WEBB

630 American Heritage Life Building

Jacksonville, Florida 32202

Attorneys for Plaintiff

[Certificate of Service omitted in printing.]

Notice of Voluntary Dismissal

(Title Page 1)

*Plaintiff hereby gives notice that it voluntarily dis-
misses this action pursuant to Rule 41(a)(1), Federal
Rules of Civil Procedure.*

Notice for Voluntary Dismissal

*Plaintiff moves for an order dismissing this action
upon the voluntary motion of plaintiff pursuant to Rule
41(a)(1), Federal Rules of Civil Procedure.*

Hogans, Towers, Barker, Jones & Gay

By /s/ Frank X. Friedmann, Jr.

Frank X. Friedmann, Jr.

1300 Florida Title Building

Jacksonville, Florida 32202

**Extract from Transcript of Proceedings on Defendants'
Motion for Temporary Injunction**

**IN THE
UNITED STATES DISTRICT COURT
IN AND FOR THE MIDDLE DISTRICT OF FLORIDA**

JACKSONVILLE DIVISION

Case No.: 67-335-Civil-J

ATLANTIC COAST LINE RAILROAD COMPANY,

Plaintiff,

—VS.—

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS, et al.,**

Defendants.

**Taken before THE HONORABLE WILLIAM A. McRAE, JR.,
United States District Judge, commencing at 10:30 o'clock
a.m. on Friday, June 6, 1969, in Open Court.**

MOTION FOR VOLUNTARY DISMISSAL BY PLAINTIFF

DEFENDANT'S MOTION FOR PRELIMINARY INJUNCTION

Appearances:

FRANK X. FRIEDMAN, JR., Esq.

**Attorney at Law, of the Law Firm of Rogers,
Towers, Bailey, Jones & Gay, Jacksonville,
Florida; appeared on behalf of the Plaintiff.**

FRANK X. FRIEDMANN, JR.; Esq.

Attorney at Law, of the Law Firm of Rogers, Towers, Bailey, Jones & Gay, Jacksonville, Florida; appeared also on behalf of the Plaintiff.

ALLAN MILLEDGE, Esq.

Attorney at Law, of the Law Firm of Milledge & Horn, Miami, Florida; appeared on behalf of the Defendant.

RICHARD HORN, Esq.

Attorney at Law, of the Law Firm of Milledge & Horn, Miami, Florida; appeared also on behalf of the Defendant.

[49]

Mr. Milledge: . . .

Now, what have we been involved with, then, with the State Court? Up until this year, it couldn't be categorically said that maybe there wasn't room for an application of State Law to this picketing. Now, it was strenuously argued in the United States Supreme Court, but it has now been decided. Now, they have not gone into the State Court and said, "Your injunction is supportable under Federal Law." They have waived all Federal Law. What they have been telling this Court over here is that, somehow or another, State Law can apply to this conduct; and we know from the decision of the United States Supreme Court—it's very clearly stated—that there is no room for the application of State Law.

Now, what they've been engaged in, then, is essentially a kind of a flim-flam operation, in which they—which it is clear that only Federal Law can apply—that this Court has assumed jurisdiction, to determine Federal Law; and yet they are over here in a State Court, seeking still to apply

State Law, which would, if left alone, come—or might come to a different conclusion—as it already has—to one which we would have in this Court, about [50] the legality or illegality of the conduct involved.

But this Court has jurisdiction—and that's what the injunction is about, is to preserve that jurisdiction, to make the final determination.

Now, just—and I might say Judge Luckie's recent opinion, which is in letter form, is in the file now; we attached all relevant documents by way of an affidavit. And also in the file is the transcript of the hearing. Now, I would refer Your Honor to Page 30, talking about enforcement of determinations made by this Court. They tell Judge Luckie—on Page 29 and 30—I believe this is Mr. Foster—it is Mr. Foster speaking (reading from document):

"Now, obviously, in this opinion which Your Honor has just gone through with Mr. Milledge, when you were speaking of the *B.R.T.* decision, the Court based a great deal of reliance on the fact that the Jacksonville Terminal Company was an integral part of F.E.C. operations, and he—"

The Court: What are you reading from?

Mr. Milledge: Sir? What am I reading from?

[51] The Court: Yes.

Mr. Milledge: I'm reading from a transcript of proceedings before Judge Luckie in Case Number 67-3536—

The Court: Who's doing the talking?

Mr. Milledge: David Foster—whom I don't see here—well, you know Mr. Foster. This is Mr. Foster talking (reading from document):

"... the Court based a great deal of reliance ..."—the Supreme Court, he's speaking of—"... great deal

of reliance on the fact that the Jacksonville Terminal Company was an integral part of F.E.C. operations, and we don't see how any Court could find that this is true as to Moncrief Yard."

Reading from Your Honor's Order of April 26, 1967—in this case—it's Finding of Fact Number 5 (reading from document):

"After an evidentiary hearing, the use of A.C.L.'s Moncrief Yard by F.E.C. to receive and deliver freight is an integral and necessary part of F.E.C.'s operations."

[52] And he's telling Judge Luckie after that finding—and they say now they're willing to have it be final—that no Court could find—he says that, on Page 44 of the same transcript—Mr. Friedmann is speaking; it's about the middle of the page. He says (reading from document):

"As Mr. Foster has pointed out, we are not factually involved in the day-to-day operation of F.E.C."

That's what he's telling Judge Luckie.

Paragraph 4 of the Findings of Fact—of your Findings of Fact is a long one; but it deals with the interchange between F.E.C. and A.C.L. as performed in the Moncrief facility; trains operated by strike replacement crews daily enter and operate in the A.C.L. yard for the purpose of delivering, receiving interchange freight; this interchange traffic averages 420 cars per day, or over 150,000 cars per year. The interchange of freight with A.C.L. constitutes approximately 60 per cent of all freight received and delivered by F.E.C. at its northern terminus.

Well, these are simply illustrations of what it is—really what it is that they are doing, is that they are urging something entirely inconsistent [53] with the Findings of Fact of this Court; and we respectfully submit that the *Galveston* decision is controlling on this question. . . .

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; et al.,

Defendants.

**Order Denying Voluntary Dismissal
and Granting Injunction**

(Filed June 20, 1969)

On June 6, 1969, a hearing was held in the above entitled cause upon Defendants' Motion for Preliminary Injunction, filed June 4, 1969, and upon Plaintiff's Notice of Voluntary Dismissal and Motion for Voluntary Dismissal.

It appears that Plaintiff's purported Notice of Voluntary Dismissal is without effect, as Defendants had, prior to Plaintiff's "notice", filed an Answer herein on May 27, 1969. Fed R. Civ. P., Rule 41(a)(1). Furthermore, Plaintiff has failed to show that the Answer was filed merely to foreclose a voluntary dismissal. See *Kohloff v. Ford Motor Co.*, 29 F. Supp. 843 (S.D.N.Y. 1939); *Flaig v. Yellow Cab Co.*, 4 F.R.D. 174 (W.D.Mo. 1944).

As the Court is of the opinion that Defendants' Motion for Preliminary Injunction has merit, Plaintiff's Motion for Voluntary Dismissal under Rule 41(a)(2), Fed. R. Civ. P., will be denied.

Defendants seek to have this Court enjoin Plaintiff from availing itself of the Order for Temporary Injunction entered May 3, 1967, in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, in Case No. 67-3586, Division E. The state court order enjoined the picketing activities of Defendants as against the Plaintiff herein on the ground that the picketing violated state law.

Defendants herein contend that this Court should enter its injunction on the ground that it is necessary in aid of this Court's jurisdiction, and to protect and effectuate the judgment of this Court dated April 26, 1967. 28 U.S.C. § 2283.

Plaintiff argues that *Amalgamated Clothing Workers v. Richman Bros.*, 348 U.S. 511 (1955), requires this Court to allow the state proceedings to continue without interference. Plaintiff's reliance is misplaced, however, for in *Richman* the District Court could issue no injunction in aid of its jurisdiction because the District Court had no jurisdiction to aid. There the District Court's jurisdiction was preempted by that of the National Labor Relations Board. In the instant case, however, this Court has jurisdiction (see Order of April 26, 1967, Conclusion of Law No. 1) and may grant injunctive relief in aid thereof.

In its Order of April 26, 1967, this Court found that Plaintiff's Moncrief Yard, the area in question, "is an integral and necessary part of [Florida East Coast Railway Company's] operations." Finding of Fact No. 5. The Court concluded furthermore that Defendants herein "are now free to engage in self-help." Conclusion of Law No. 3. The injunction of the state court, if allowed to continue in force,

would effectively nullify this Court's findings and delineation of rights of the parties. The categorization of Defendants' activities as "secondary" does not alter this state of affairs. See *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, — U.S. —, 22 L.Ed. 2d 344 (1969). The prohibition of 28 U.S.C. § 2283, therefore, does not deprive this Court of jurisdiction to enter the injunction in this instance. *Capital Service, Inc. v. NLRB*, 347 U.S. 501 (1954); *Brotherhood of Ry. Trainmen v. Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968).

It is, therefore,

ORDERED:

1. Plaintiff's Motion for Voluntary Dismissal is denied.

2. Plaintiff, Atlantic Coast Line Railroad Company (merged predecessor of Seaboard Coast Line Railroad Company), its agents, servants, employees and attorneys and all persons in active concert and participation with them, are enjoined from giving effect to or availing themselves of the benefits of the Order for Temporary Injunction entered May 3, 1967, in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, Case No. 67-3536, Division E, pending the final hearing and determination of this action.

DONE AND ORDERED at Jacksonville, Florida, this 19th day of June, 1969.

WM. A. McRAE

Judge

Copies to counsel

UNITED STATES DISTRICT COURT**MIDDLE DISTRICT OF FLORIDA****JACKSONVILLE DIVISION****No. 67-335-Civ-J**

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,***Plaintiff,*****v.****BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE DIVI-
SION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS;
*et al.,******Defendants.***

**Request to Set for Final Hearing and Motion
for Expedited Final Hearing****(Filed June 23, 1969)**

Plaintiff Atlantic Coast Line Railroad Company requests pursuant to Rule 40, Federal Rules of Civil Procedure, that this cause be set down for final hearing and plaintiff moves pursuant to Rule 7 and 8, Rules of the United States District Court, Middle District of Florida, that the period of time from when issue was joined in this cause to final hearing be shortened. In support of its motion to expedite final hearing, plaintiff states:

1. A full evidentiary hearing was had in this cause on April 25, 1967 on plaintiff's application for temporary injunctive relief. The Court held by order dated April 26, 1967, that it did not have jurisdiction to issue a restraining order because this case grew out of a labor dispute subject

to the provisions of the Norris-La Guardia Act, 29 USC §§ 101 et seq.

2. Plaintiff fully presented its evidence at the hearing on April 25, 1967 on the issue of jurisdiction under the Norris-La Guardia Act and that evidence will be admissible at the final hearing in this cause and need not be repeated.

3. The Court enjoined plaintiff by order dated June 19, 1969 "pending the final hearing and determination of this action" from availing itself of the benefits of the Order for Temporary Injunction entered May 3, 1967 in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, in Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers, et al., No. 67-3536, Division E.

4. Therefore, good cause exists for expediting final hearing in this action and for finally determining the merits of plaintiff's Application for Entry of a Permanent Injunction.

MEMORANDUM IN SUPPORT OF REQUEST AND MOTION

The District Courts are given the discretion to establish rules for the setting of cases for final hearing. Rule 40, Federal Rules of Civil Procedure. The Middle District had determined in its discretion that the time between when issue is joined and final hearing may be shortened for good cause shown and that an expedited procedure may be adopted in emergency matters. Rule 7 and 8, Rules of the United States District Court, Middle District of Florida. The plaintiff fully presented its evidence in support of its claim for relief at the hearing on April 25, 1967. This evidence is admissible at final hearing and need not be repeated for the record. Rule 65, Federal Rules of Civil Procedure.

No action was taken in this cause from April 25, 1967 through May 23, 1969. On the latter date defendants filed a handwritten answer to the complaint. Subsequently on June 3, 1969, defendants filed a motion for preliminary injunction which culminated in this Court's order dated June 19, 1969 restraining plaintiff from taking benefit of the Order for Temporary Injunction entered May 3, 1967, in the case between the same parties in state court *based solely on state law*. Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers, et al., Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, Case No. 67-3536, Division E.

On the same day that the defendants' answer was filed, the State Court action was being argued on defendants' motion to dissolve the injunction. During the hearing defendants removed the cause for a third time to federal court. Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers, et al., United States District Court for the Middle District of Florida, Jacksonville Division, Case No. 69-351-Civ-J. This Court granted plaintiff's motion to remand grounded upon lack of original jurisdiction in the federal courts under §§ 1331 or 1337, 28 USC.

In the event this Court is persuaded at final hearing that the Norris-La Guardia Act, 29 USC §§ 101 et seq., constitutes a bar to this Court's "jurisdiction to issue any . . . permanent injunction" (29 USC § 101), then it is respectfully submitted that, as stated by the Fifth Circuit, the Court can "deal only with the enjoynability of [defendants'] activity" in Federal Court and "not with its legality for any other purpose". Brotherhood of Railroad Trainmen v. Atlantic Coast Line Railroad Company, 262 F.2d 649, 653 (5th Cir. 1966). The legality of the subject picketing never comes in issue.

This case ends upon a determination that the Norris-La Guardia Act constitutes a bar to injunctive relief. The plaintiff's complaint neither contains a separate damages count nor prays for compensatory relief. The entry of an order grounded on Norris-La Guardia adverse to plaintiff's application for permanent injunction will establish this Court's lack of jurisdiction. The Federal courts have never enjoined parties from seeking relief in state court to protect non-existent jurisdiction. *Amalgamated Clothing Workers of America v. Richman Bros.*, 348 US 511 (1965); *International Association of Machinists v. United Aircraft Corporation*, 333 F.2d 367 (2d Cir. 1964); *National Labor Relations Board v. Swift & Company*, 233 F.2d 226 (8th Cir. 1956).

It is respectfully submitted that a refusal by this Court to finally determine the cause joined with the Court's Order of June 19, 1969 would result in gross injustice to plaintiff. And, pending final determination of this case defendants may have the power to virtually shut off the State of Florida from rail passenger and freight service.

CONCLUSION

Plaintiff Atlantic Coast Line Railroad Company respectfully submits that this cause should be set down on an emergency basis for final hearing.

Respectfully submitted,

ROGERS, TOWERS, BAILEY, JONES & GAY

By DAVID M. FOSTER

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[Certificate of Service omitted in printing.]

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Plaintiff,

—VS.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; *et al.*,

Defendants.

Motion to Stay Injunction Order

Dated June 19, 1969

(Filed June 25, 1969)

Plaintiff Atlantic Coast Line Railroad Company moves for the entry of an order staying the effect of the injunction dated June 19, 1969, issued against plaintiff, its agents, servants, employees and attorneys, pending a final hearing in this cause, and for grounds therefor would show:

1. The judge that issued said injunction order is currently hospitalized and is unable to hold a final hearing in this cause.

2. The other judge assigned to this division will be out of the geographic area for a period of thirty days and will

be unable to hold a final hearing prior to the expiration of said period.

8. Plaintiff is further informed that there is no other judge assigned to this Court who would be able to expeditiously hold a final hearing.

4. The Order of June 19, 1969, enjoined, pending a final hearing of this cause, the plaintiff, its agents, servants, employees and attorneys and all persons in active concert and participation with them from giving effect to or availing themselves of the benefits of the Order for Temporary Injunction entered May 3, 1967, in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers, No. 67-3536, Division E.

5. The parties to this action have maintained their positions since the state court Order for Temporary Injunction was entered on May 3, 1967, and defendants have not availed themselves of Florida appellate processes.

6. The changing of the status quo prior to June 19, 1969, pending a final hearing of this cause, as has been shown by the evidence in this action and as the State Circuit Court found in its Order for Temporary Injunction, will cause the plaintiff irreparable harm.

WHEREFORE, plaintiff moves for the entry of an order staying the effect of the injunction contained in the Order of this Court dated June 19, 1969, until such time as a final hearing in this cause may be heard.

MEMORANDUM IN SUPPORT OF MOTION TO STAY

Plaintiff has moved for the entry of an order staying the Order dated June 19, 1969, pending the final hearing of this cause. The basis of this motion is the extraordinary circumstance of non-availability of district judges to conduct a final hearing of this cause.

It is not disputed that irreparable injury will result to the plaintiff if the present positions of the parties to this action, which have remained static since May 3, 1967, are altered prior to a final hearing of this cause. Realizing this, the plaintiff has moved for an expedited final hearing of this cause but has found that such an expedited hearing will not be available to it due to the unavailability of an appropriate judge.

Since it is conceivable that a final hearing in this cause could be delayed for as much as thirty days; and since the evidence submitted in this case shows that picketing for a period of that length would cause irreparable injury, it is respectfully submitted that it is within the discretion of this Court, pursuant to Rule 62(a), Federal Rules of Civil Procedure, to provide for a stay or said injunction of June 19, 1969, until a final hearing in this cause is held.

The applicable portion of Rule 62 is set out as follows:

"Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal." (Emphasis supplied)

Plaintiff contends that the unusual circumstances attending this case make it appropriate for the Court to provide for a stay of this injunction.

Respectfully submitted,

ROGERS, TOWERS, BAILEY, JONES & GAY

By JOHN B. CHANDLER, JR.

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[Certificate of Service omitted in printing.]

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Plaintiff,

—vs.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,

Defendants.

Motion to Suspend Injunction Pending Appeal

(Filed June 25, 1969)

Plaintiff moves, pursuant to Rule 62(c), Federal Rules of Civil Procedure, and Rule 8, Federal Rules of Appellate Procedure, for the entry of an order suspending the injunction granted by this Court by its Order dated June 19, 1969, pending disposition of the appeal taken by plaintiff in this cause from the entry of said Order. Plaintiff relies upon the following grounds for this motion:

- (1) Unless the motion is granted, the plaintiff is subject to picketing of its rail facilities which will cause a substantial interruption of rail traffic in Jacksonville, Florida, and throughout the State of Florida, causing plaintiff irreparable harm for which there is no adequate remedy at law.
- (2) The granting of the motion will maintain the status quo which has existed since the entry of the Order of Temporary Injunction dated May 3, 1967, by the

Circuit Court in and for Duval County, Florida. During this two year period, the defendants took no steps to have said temporary injunction reviewed by the state appellate courts, having sought review of said injunction for the first time on June 6, 1969, in this Court.

- (3) Plaintiff has filed a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit and will seek an expeditious disposition of that appeal.
- (4) The subject matter of the appeal, involving a grave question of the injection of Federal judicial jurisdiction into the jurisdiction of the courts of the State of Florida, warrants that the plaintiff be afforded the opportunity of appellate review, which opportunity will be effectively denied if a suspension of the injunction is not granted.

ROGERS, TOWERS, BAILEY, JONES & GAY

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Attorneys for Plaintiff

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IN THE
UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; *et al.,*

Defendants.

**Order Denying Motions to Stay and Suspend Injunction
and Deferring Various Other Motions**

(Filed June 25, 1969)

Upon consideration, it is

ORDERED:

1. The Court defers ruling upon plaintiff's motion to set for final hearing and motion for expedited final hearing, plaintiff's application for entry of permanent injunction and plaintiff's motion to dissolve injunctive order dated June 19, 1969, subsequent to final hearing, until the United States District Judge previously presiding in this case hears said motions, or until July 25, 1969.

2. Plaintiff's motion to stay injunction order dated June 19, 1969, is denied.

3. Plaintiff's motion to suspend injunction pending appeal is denied.

4. Plaintiff's request to Clerk to certify and transmit partial record is hereby amended to include proposed orders numbered 1, 2 and 3, which were filed by the plaintiff during the course of the hearing this date, and to include this order.

DONE AND ORDERED at Jacksonville, Florida, this 25th day of June, 1969.

CHARLES R. SCOTT

Judge

UNITED STATES COURT OF APPEALS**FOR THE FIFTH CIRCUIT****No. 28064**

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,***Appellant,*****—v.—****BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood; and G. Q. RUTLAND, individually and as a member of said Brotherhood,*****Appellees.***

Application for Stay of Injunction Pending Appeal**(Filed June 25, 1969)**

Appellant moves for the entry of an order staying the effectiveness of the District Court's order dated June 19, 1969, pending disposition of this appeal. This application is made pursuant to Rule 8, Federal Rules of Appellate Procedure.

I. FACTS.

The appellant ("ACL") is a railroad common carrier with its principal place of business in Jacksonville, Duval

County, Florida. The appellant furnishes rail service to the bulk of the Florida peninsula in addition to the metropolitan area of Jacksonville, Florida. The Brotherhood of Locomotive Engineers is a labor organization which represents certain employees of the Florida East Coast Railway Company ("FEC"), which employees have been on strike against the Florida East Coast Railway Company since 1966. The individual defendants actively controlled or participated in the picketing and other conduct complained of by appellant. None of the defendants are employees of ACL nor does the defendant, Brotherhood of Locomotive Engineers represent any of the employees of ACL insofar as the subject matter of this litigation is concerned.

Among other rail facilities operated by it, ACL owns and operates a rail car classification and interchange yard in Jacksonville, Florida, known as "Moncrief Yard".

On April 23, 1967, without notice, the defendants began to picket entrances to Moncrief Yard and to disburse letter notices to ACL employees going to work through those entrances. The purpose of the picketing and distribution of letter notices was to cause ACL employees working at Moncrief Yard to refuse to carry out their regularly assigned duties with regard to any ACL rail cars delivered to Moncrief Yard by the FEC and with regard to any ACL cars arriving at Moncrief Yard destined for delivery to FEC. Certain tracks within the Moncrief Yard complex are designated for the placing of cars by ACL employees for pickup by the FEC. Other tracks are designated for the placing of cars by FEC for pickup by ACL. In response to the picketing and letter notices, ACL employees refused to perform their assigned duties at Moncrief Yard with respect to such rail cars while the same were under the control and responsibility of ACL. That effect was brought

about by ACL employees: (1) refusing to break down and classify road trains containing cars destined to the FEC; (2) refusing to build road trains containing cars that had arrived at Moncrief Yard from FEC; and (3) refusing to couple up to or otherwise move cars destined to or arriving from FEC.

No switching, signalling, car repair or other services are performed by ACL at Moncrief Yard for FEC. No FEC employees report to or depart from work at Moncrief Yard. There is no interlocking stock ownership between FEC and ACL. The tracks and real property of FEC and ACL do not adjoin, the same being separated by the tracks and real property of Jacksonville Terminal Company, an intervening carrier. The appellees' picketing was directed to ACL employees performing duties and services for ACL and not to ACL employees performing services for the FEC.

The effect of the response of the ACL employees to the appellees' activity was a total disruption of interchange operations in Moncrief Yard. The rail operations interrupted by appellees included the movement of thousands of rail cars destined to other points within and without Florida on the ACL, disruption of interchange between ACL and the Seaboard Air Line Railway Company, disruption of interchange between ACL and the Southern Railway System, and disruption of switching and delivery of cars by ACL to industrial sites in metropolitan Jacksonville. The foregoing occurred, and in the event of renewed picketing would again take place, because Moncrief Yard serves as the major throat of ACL traffic into and out of the State of Florida, as well as the major facility for the switching and classification of rail cars for the Jacksonville industrial complex served by ACL.

II. PROCEDURAL STATUS OF THIS ACTION AND THE RELATED STATE COURT ACTION.

An understanding of the issues in this appeal requires a consideration of the instant federal court action, as well as a subsequent state court proceeding.

A. Federal Court Action.

On April 25, 1967, ACL commenced this action in the United States District Court for the Middle District of Florida. The theories upon which that complaint was founded were that the conduct of appellees: (a) had induced the ACL employees to violate the provisions of the Railway Labor Act, 45 USC 151, et seq., by refusing to work without first exhausting the dispute resolving procedures of that Act; and (b) was in violation of the Interstate Commerce Act, 49 USC 1(4), 1(11), 1(15), 1(17) and 3(4) in that the ACL was prevented from carrying out its duties under that Act.

After a full evidentiary hearing before District Judge William A. McRae, Jr., ACL applied for the issuance of a temporary injunction. On April 26, 1967, District Judge McRae entered an order denying ACL's application for a temporary injunction. The Court found that the picketing in question would cause "severe congestion" of the Moncrief Yard, but the Court held that it was deprived of jurisdiction to grant injunctive relief by virtue of the provisions of the Norris-LaGuardia Act, 29 USC § 101, et seq.

B. Subsequent State Court Action.

On April 27, 1967, ACL filed a complaint in the Circuit Court of Duval County, Florida. That complaint, based solely on alleged violations of the laws of the State of Florida, sought to have enjoined the picketing and the

distribution of letter notices at Moncrief Yard. After hearing evidence presented by both parties, Circuit Judge Charles A. Luckie entered an order for temporary injunction dated May 3, 1967, based upon violation of state law.

C. Removal Efforts as to the State Court Action.

On April 27, 1967, the appellees removed the action pending in the Circuit Court of Duval County, Florida, to the District Court for the Middle District of Florida. On April 27, 1967, pursuant to ACL's motion to remand, that action was remanded to the state court. Again, on May 23, 1967, the defendants removed the pending state court action to the District Court for the Middle District of Florida. Similarly, after argument before Judge McRae, the action was once more remanded to the state court. As late as May 23, 1969, the defendants sought to remove the state court action a third time. The petition was filed several minutes after the conclusion of a hearing in state court. The action was remanded May 28, 1969. It may safely be assumed that in both instances the federal court remanded because it found that the state court action involved neither any issues of federal law nor diversity of citizenship between the parties.

D. Dormancy of Federal and State Court Actions.

From April 26, 1967, when District Judge McRae denied the plaintiff's application for temporary injunctive relief, no action was taken by either party to prosecute or otherwise dispose of the instant federal court action until the defendants filed their handwritten answer to the complaint on May 23, 1969. Except for the second removal effort discussed above, and except for ACL's filing of interrogatories to prevent dismissal of the action for want of prosecution,

no action was taken by either party in the state court action from May 3, 1967, when Circuit Judge Luckie entered the order for temporary injunction, until April 25, 1969, when the appellees filed their motion to dissolve the state court temporary injunction.

E. *Application for Dissolution of Temporary Injunction in State Court.*

On April 25, 1969, the defendants filed before Circuit Judge Luckie a motion to dissolve the state court temporary injunction. That motion was founded upon the decision in *Trainmen v. Terminal Company*, — U. S. —, 22 L.Ed. 344, 89 S. Ct. 1109 (1969). Argument was held on that motion before Circuit Judge Luckie on May 23, 1969, and again on May 29, 1969. Subsequently, Circuit Judge Luckie announced, by letter to counsel for all parties, his intention to deny defendants' motion to dissolve the state court temporary injunction. Circuit Judge Luckie advised that the factual distinctions between the action pending before him and the facts presented in *Trainmen v. Terminal Company*, *supra*, warranted a different result. That action is still pending in the Circuit Court of Duval County, Florida. The defendants have taken no affirmative steps to seek appellate review of the Circuit Court's action.

F. *Appellees' Motion for Temporary Injunction Pending Final Disposition of the Federal Court Action and ACL's Attempt to Dismiss the Federal Court Action.*

On June 3, 1969, the appellees filed in the District Court action a motion for entry of a temporary injunction against the ACL and its agents and attorneys from giving effect to or availing themselves of the benefits of the state court temporary injunction "pending the final hearing and de-

termination of" this federal court action. Immediately thereafter, ACL filed its motion for leave to voluntarily dismiss the action together with its notice of voluntary dismissal. Argument was heard on those motions before District Judge McRae on June 6, 1969. In the course of that hearing, appellant offered to submit to a dismissal of the action with prejudice.

G. Order of District Court Denying Application for Dismissal and Granting Appellees' Motion for Temporary Injunction.

On June 19, 1969, District Judge McRae entered an order denying ACL's application for dismissal of the action and "enjoining" ACL and its agents and attorneys from giving effect to or availing themselves of the benefit of the state court temporary injunction "pending the final hearing and determination of" the federal court action. Appellees' motion for entry of a temporary injunction was not specifically ruled upon.

H. ACL's Application for Dissolution of the June 19, 1969, Injunctive Order; ACL's Request to Set for Final Hearing; ACL's Motion for Expedited Final Hearing; and ACL's Application for Permanent Injunction.

On June 23, 1969, ACL moved the District Court to dissolve the June 19, 1969, injunctive order. At the same time, ACL moved to have the action set for final hearing on an expedited basis and applied for entry of a permanent injunction. After a hearing before District Judge Charles R. Scott on June 25, 1969, at which the appellees objected the matter coming on for final hearing, the District Court declined to rule upon those ACL motions, so that ACL has effectively been denied a final adjudication of this action.

I. *Order of District Court From Which This Appeal Is Taken.*

District Judge McRae's June 19, 1969, injunctive order (subparagraph G, above) is the order from which this appeal is taken.

J. *Application to District Court for Suspension of Injunction.*

On June 25, 1969, appellant made application to District Judge Scott for an order suspending the effect of the June 19, 1969, temporary injunction pending a determination of this appeal. By its Order dated June 25, 1969, the District Court denied that motion for suspension of the injunction.

III. ARGUMENT.

The District Court's Order dated June 19, 1969, enjoining appellant from availing itself of the benefits of the existing State Court temporary injunction: (1) will have the effect of subverting the appellate review procedures of the courts of the State of Florida and be tantamount to a federal court ouster of state judicial power; and (2) can only serve the purpose of protecting non-existent jurisdiction since appellant's application for a temporary injunction has been denied on the ground that the District Court did not have "jurisdiction to issue any . . . injunction" because this is a case "involving or growing out of a labor dispute . . ." 29 U.S.C. § 101.

The provisions of Section 2283, 28 U.S.C., were not designed to protect non-existent federal jurisdiction or to provide federal courts a medium to control the application of state law by state courts. *Amalgamated Clothing Workers of America v. Richman Bros.*, 348 U.S. 511 (1965). Further, if the District Court was without jurisdiction un-

der the Norris-LaGuardia Act (29 U.S.C., §§ 101, et seq.) to prohibit the subject picketing by injunction, then it is likewise without jurisdiction to prevent the appellant from exercising "self help" by seeking a state court injunction.

A. Subsequent to Final Determination of This Cause, Section 2283, 28 U.S.C., Does Not Authorize an Injunction Restraining Appellant From Availing Itself of a State Court Injunction Based Solely Upon State Law.

This case was heard on the merits by the District Court on April 25, 1967, upon appellant's application for temporary injunction. The appellees' position was that this case involved or grew out of a labor dispute and that, therefore, the District Court was without jurisdiction to issue an injunction. 29 U.S.C. § 101. The Order Denying Application for Temporary Injunction dated April 26, 1967, so held.

In the order denying appellant temporary injunctive relief, the District Court dealt "only with the enjoynability of appellant's activity [under Norris-LaGuardia] and not with its legality for any other purpose". *Brotherhood of Railroad Trainmen v. Atlantic Coast Line Railroad Company*, 362 F.2d 649, 653 (5th Cir. 1966). As stated by the Fifth Circuit:

"In Norris-LaGuardia, Congress did not . . . make the conduct listed lawful for all purposes. The most logical inference from this fact is that in Norris-LaGuardia Congress intended only to remedy abuses of judicial equity power relating to injunctions, allowing the law relating to the 'legality' of the described activity for other purposes to develop in the courts." 362 F.2d at 653, fn. 3 (Emphasis Added).

The District Court cannot properly determine the legality of the picketing unless it has jurisdiction to act under the Norris-LaGuardia Act, and the District Court did not have original federal jurisdiction to determine the legality of the conduct under state law in the case which appellees seek to enjoin. That point is plainly evidenced by the three instances in which the state court action was remanded by the District Court. The legality of the picketing under state law is a decision which should be made by the state court subject to appropriate appellate review. The integrity of Florida's judicial system should not be subverted by an order which has the effect of prohibiting the state court from acting.

The appellees' position on the merits in state court is that state law is totally pre-empted by virtue of the decision in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Company*, — U.S. —, 22 L.Ed.2d 344, 89 S.Ct. 1109 (1969). Appellant's position in state court is that the doctrine of *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949), applies in this instance giving the Florida Circuit Court power to enjoin the picketing under the law of the State of Florida. *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Company*, *supra*, 22 L.Ed.2d at 363, fn. 25.

Appellant's argument in state court was that the United States Supreme Court in the *Terminal Company* case held: (1) Terminal Company was a common situs subject to primary picketing with secondary implications; this conclusion was arrived at by drawing an analogy from the case law under Section 8(b)(4) of the Labor Management Relations Act, 29 U.S.C., § 158(b)(4); (2) Terminal Company and FEC were related corporations (that is, had integrated operations and ownership); (3) Terminal Company was in

fact a party, as that term is defined in the Railway Labor Act, 45 U.S.C., §§ 151, et seq., to the FEC-Brotherhood labor dispute (which dispute had run the course of the administrative procedures of the Railway Labor Act); (4) the United States Supreme Court concluded that the Terminal Company as a party to a labor dispute was subject to self-help activity by the Brotherhood; (5) ACL is not related to FEC and Moncrief Yard is not a common situs; (6) the United States Supreme Court in *Terminal Company* did not hold that Congress by total inaction in the Railway Labor Act pre-empted the application of all state law in non-violent picketing situations; and (7) where, as here, the picketed employer is not a "party" to the labor dispute, the rule of *Giboney v. Empire Storage & Ice Company*, *supra*, applies and the state court is free to apply state law.

If a federal court finds that it is without jurisdiction to act and consequently cannot reach the question of the legality of the conduct under federal law and hold that it is without original jurisdiction to consider an action pending in the state court, the federal court does not have the power to protect non-existent jurisdiction and enjoin the state court action. *Amalgamated Clothing Workers of America v. Richman Bros.*, *supra*; *International Association of Machinists v. United Aircraft Corporation*, 333 F.2d 367 (2nd Cir. 1964); *National Labor Relations Board v. Swift & Company*, 233 F.2d 226 (8th Cir. 1956). Further, the federal court should evidence that confidence in the state trial and appellate systems which has been traditionally shown by the federal courts and should avoid conflicts with or exercising control over the state courts' exercise of judicial duties.

B. Subsequent to Final Determination of This Cause, the Norris-LaGuardia Act, 29 U.S.C., § 101, Prohibits the Entry of an Injunction Which Mandatorily Enjoins Appellant to Allow the Subject Picketing and to Refrain From Self-Help.

The appellees' position in this case has been that the District Court is without jurisdiction to enjoin the subject picketing because the ACL and the appellees are parties to a labor dispute. If the federal courts cannot prohibit the activity in question under Norris-LaGuardia Act on the ground that ACL is a party to a labor dispute, then the plain language of the Act likewise prohibits the Court from permitting the picketing or prohibiting the appellant from engaging in "self-help". 29 U.S.C., § 101.

The unfairness of permitting the subject picketing by mandatory injunction upon the application of the appellees, while denying appellant an opportunity to contrary judicial relief, is apparent. To do so clearly brings into issue whether the Norris-LaGuardia Act in this instance so discriminates between parties, similarly situated, by denying only one the right to apply to the federal courts for relief, that the Act violates the due process clause of the Fifth Amendment to the United States Constitution. *Schneider v. Rusk*, 377 U.S. 163 (1964); *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Republic Pictures Corporation v. Kappler*, 151 F.2d 543 (1945), *aff'd* 327 U.S. 757 (1946), *reh. den.* 327 U.S. 817 (1946); *Swick v. Glenn L. Martin Co.*, 68 F.Supp. 863 (1946), *aff'd* 160 F.2d 483 (1947), *cert. den.* 332 U.S. 772 (1947).

C. The Emergency Nature of this Appeal Merits the Entry of the Stay Requested by Appellant.

Unless the motion is granted, the appellant is subject to picketing of its rail facilities which will cause a substantial

interruption of rail traffic in Jacksonville, Florida, and throughout the State of Florida, causing appellant and the public irreparable harm for which there is no adequate remedy at law. The granting of the motion will maintain the status quo pending a final determination of the rights of the parties. During the two year period since the state court temporary injunction was entered, the appellees took no steps to have that temporary injunction reviewed by the Florida appellate courts, having sought review of that injunction for the first time on June 6, 1969, in the District Court below. The appellees have made no showing that irreparable harm will be sustained by them during a stay of the temporary injunction. The subject matter of the appeal, involving a grave question of the injection of federal judicial jurisdiction into the jurisdiction of the courts of the State of Florida warrants that the appellant be afforded the opportunity of appellate review. That opportunity will be effectively denied if a suspension of the injunction is not granted.

IV. CONCLUSION.

In the event a stay is not granted, a practical opportunity will not exist to test the District Court. June 19, 1969, Order. One week, perhaps one day, of picketing of Moncrief Yard will shut down ACL rail freight services to Florida. The Brotherhood has waited two years to picket; two weeks will not harm their cause. Therefore, it is respectfully submitted that the Motion to Stay Temporary Injunction Pending Appeal should be granted.

Respectfully submitted,

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. _____

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Appellant,

versus

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; J. E. EASON, individually and as an official of
said Brotherhood; J. D. SIMS, individually and as an
official of said Brotherhood; H. M. SAWYER, individually
and as a member of said Brotherhood; W. K. MORRIS,
individually and as a member of said Brotherhood; and
G. Q. RUTLAND, individually and as a member of said
Brotherhood,

Appellees.

Order Denying Application

(Filed June 26, 1969)

Presented to the undersigned as a single judge is ap-
pellant's "Application for Stay of Injunction Pending Ap-
peal", seeking a stay of the effectiveness of the District
Court's Order dated June 19, 1969 (filed June 20, 1969)
pending disposition of this appeal. I have concluded that
the application may be made to me under the Federal Rules
of Appellate Procedure, Rule 8(a), because of the imprac-

ticability due to requirements of time of making an application to a panel of this Court. Any stay entered by me would necessarily be effective only until a panel of this Court could act.

After full argument, I conclude that the appeal, although raising serious questions, does not present sufficient probability of success to warrant the entry of a stay pending appeal. It follows that I should not stay the effectiveness of the District Court's Order of June 19, 1969, pending application to a panel of the Court.

The Application for Stay of Injunction Pending Appeal is accordingly ordered DENIED. See *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, — U.S. —, 89 S.Ct. —, 22 L.Ed.2d 344, decided March 25, 1969; *United Industrial Workers of S.I.U., etc. v. Board of Trustees of Galveston Wharves, et al.*, 5 Cir. 1968, 400 F.2d 320, at 330-334; *AVCO Corp. v. Int. Asso., etc.* (1968) 390 U.S. 557, 88 S.Ct. 1235, 20 L.Ed.2d 126.

/s/ BRYAN SIMPSON

United States Circuit Judge

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 28064

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Appellant,

versus

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

**Order Denying Stay Pending Appeal and Granting
Temporary Stay of Enforcement**

(Filed July 7, 1969.)

Before BELL, AINSWORTH and GODBOLT, *Circuit Judges.*

By the Court:

IT IS ORDERED that the appellant's application for stay of injunction pending appeal, filed in the above styled and numbered cause, is hereby DENIED. Brotherhood of Railroad Trainmen, *et al.*, Petitioners, *v.* Jacksonville Terminal Co., 89 S. Ct. 1109 (1969).

In view of the importance of the case it is provided, however, that a temporary stay of enforcement of the District Court's injunction be hereby granted for a period of 10 days only from the date of issuance of this order, to enable the parties to seek such further relief as they may desire.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 28064

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Appellant,

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,

Appellees.

**Motion for Entry of a Decision Upon the Merits
and for Expediting This Appeal**

(Filed July 8, 1969).

1. Pursuant to Rule 2, Federal Rules of Appellate Procedure, and Rule 11(b) of the United States Court of Appeals for the Fifth Circuit, the appellant respectfully moves the Court to expedite disposition of this appeal upon the merits and to suspend the requirements of the Federal Rules of Appellate Procedure and the rules of the United States Court of Appeals for the Fifth Circuit, to the extent necessary to cause this appeal to be disposed of upon the merits, prior to the expiration of the ten-day period specified in this Court's order dated July 7, 1969.

2. In the event this Court determines that the temporary injunction entered by the District Court should be affirmed, appellant hereby requests that this Court enter, within said ten day period, a final decision on the merits. If such decision be entered, appellant hereby represents unto this Court that appellant shall thereupon promptly petition the United States Supreme Court for a writ of certiorari to review the

final decision of this Court and shall make application to the United States Supreme Court for a stay pending disposition of that petition for writ of certiorari.

3. In order for appellant to be able to obtain review of the final decision of this Court by the United States Supreme Court, this Court must first have disposed of this appeal upon the merits.

4. Unless this Court enters a final adjudication of this appeal and thereby enables the appellant to apply for review of this Court's final decision in this appeal upon the merits, the act of this Court, in its order dated July 7, 1969, granting a stay of enforcement of the District Court's injunction for a period of ten days, shall become a nullity.

5. In the alternative to the foregoing motions, the appellant moves the Court to set this appeal down for hearing and to prescribe an abbreviated briefing schedule so that the appeal may be disposed of upon the merits within the ten-day period specified in this Court's order dated July 7, 1969, or within such extension of that ten-day period as this Court may direct.

DAVID M. FOSTER

FRANK X. FRIEDMANN, JR.

JOHN B. CHANDLER, JR.

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Attorneys for Appellant

[Certificate of Service omitted in printing.]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 28,004

ATLANTIC COAST LINE RAILROAD COMPANY,

Appellant,

versus

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,

Appellees.

**Application for Stay Pending Petition to the United
States Supreme Court for a Writ of Certiorari**

(Filed July 8, 1969)

Appellant has this date petitioned this Court for an expedited disposition of this action upon the merits. In the event this Court enters its decision affirming the temporary injunction entered by the District Court below, appellant makes the following application:

1. Appellant hereby applies to this Court for a stay of enforcement of the temporary injunction entered below, for a period not exceeding thirty (30) days, pending petition by the appellant to the United States Supreme Court for a writ of certiorari.

2. Appellant hereby represents unto this Honorable Court that within thirty (30) days from the date of the entry of a final decision in this action upon the merits by

the United States Court of Appeals for the Fifth Circuit, the appellant shall petition the United States Supreme Court for a writ of certiorari.

3. A denial of this application for stay shall result in immediate, irreparable harm to the appellant and to numerous industries and private citizens throughout the State of Florida and the Southeastern United States. The status quo can only be maintained by the granting of such a stay. The substantial questions presented in this action merit a reasonable opportunity for the appellant to seek review by the United States Supreme Court by petition for a writ of certiorari.

DAVID M. FOSTER

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Attorneys for Appellant

[Certificate of Service omitted in printing.]

IN THE
UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 28064

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Appellant,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

**Order Denying Motion for Entry of Decision on Merits
and for Expediting the Appeal, and Denying
Application for Stay Pending Certiorari**

(Filed July 11, 1969)

IT IS ORDERED, that Appellant's Motion for Entry of a Decision Upon the Merits and for Expediting this Appeal, filed in the above-styled and numbered case, is hereby denied. It is further

ORDERED, that Appellant's Application for Stay Pending Petition to the United States Supreme Court for a Writ of Certiorari is hereby denied.

Before Bell, Ainsworth and Godbold, Circuit Judges.

IN THE
UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 28064

[SAME TITLE]

Petition for Rehearing

(Filed July 14, 1969)

Appellant petitions the Court to reconsider that part of its order entered July 11, 1969, denying Appellant's Motion for Entry of a Decision upon the Merits and for Expediting this Appeal, and states as grounds for its Petition:

1. In this Court's order dated July 7, 1969, it stayed enforcement of the District Court's injunction for a period of ten days, and that action was taken in view of the importance of the case.

This Court must have intended, by that order, for Appellant to have an opportunity to seek review by the United States Supreme Court. A final decision in this appeal is necessary in order for Appellant to avail itself of normal review by certiorari from the Supreme Court of the United States, and to obtain normal consideration of an application for stay directed to the United States Supreme Court. Ordinarily, the United States Supreme Court prefers to act upon a petition for writ of certiorari and a related application for stay after the action has been finally disposed of in the Court of Appeals. In the present instance,

the United States Supreme Court may deem any action that it might take in the present procedural posture of this appeal as an intrusion into the internal workings of this Court. No useful purpose will be served by forcing Appellant to seek relief from the United States Supreme Court by a process other than that normally employed.

2. Under similar procedural circumstances, this Court has expedited its procedures without the agreement of the parties. In the appeal taken in 1966, arising out of the picketing of Jacksonville Terminal Company and decided by this Court's decision in *Brotherhood of Railroad Trainmen v. Atlantic Coast Line Railroad Company*, 362 F.2d 649 (5th Cir. 1966), the following procedure was followed:

(A) The District Court entered an order for preliminary injunction on May 10, 1966.

(B) The Brotherhood filed its notice of appeal and other appellate papers that same day, including an application for stay pending appeal.

(C) On or about May 17, 1966, this Court heard oral argument upon the Brotherhood's motion for stay; that argument was heard in Houston, Texas.

(D) On May 18, 1966, this Court granted the Brotherhood's motion for stay, effective May 24, 1966. In the same order, this Court set oral argument on the merits, to be heard in Atlanta, Georgia, on May 23, 1966.

(E) At the conclusion of the oral argument on May 23, 1966, this Court forthwith denied Atlantic Coast Line's motion to stay pending review by writ of certiorari from the United States Supreme Court.

(F) The final judgment of this Court was entered from the bench on May 24, 1966, after a brief recess following the close of oral argument.

3. The normal appellate processes specified by this Court are designed to: (A) protect the parties by allowing each to fully present its position to the Court, and (B) advise the Court of the relevant facts and applicable law. This appeal involves clear-cut legal issues arising out of facts which are not contested by the parties. It appears that the Court, by denying the Appellant's application for stay, has reached a final determination upon the substantive issue in this case, after full briefing which extensively discussed the merits. It is respectfully submitted that this Court indicated, by its order of July 7, 1969, denying the Appellant's application for stay, that *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Company*, 394 U.S. 369 (1969), controls and mandates an affirmance of the District Court's June 19, 1969, injunctive order.

In the event this Court has not reached a final decision on the merits, it is respectfully submitted that it is appropriate for the Court either to convene for hearing oral argument prior to July 17, 1969, or to extend the period of the stay granted by the Court's order of July 7, 1969, until the Court can hear oral argument and be presented with such further papers as the Appellees care to submit.

Appellant hereby affirmatively states that it has already submitted, by brief, all relevant factual and legal arguments on its behalf in this appeal. Appellant hereby agrees, without prejudice to its right to further appellate review, to have this Court enter a final decision on the merits adverse to the Appellant. In the alternative, Appellant hereby agrees to make itself available at any time or place between the date of this Petition and 12:00 midnight, Thurs-

day, July 17, 1969, for oral argument before the panel in this cause.

4. The only party who may suffer harm by expediting the entry of a final decision in this case is Appellant. It is significant to recognize that, while the Appellees have not agreed that this matter may be disposed of upon the merits on an expedited basis, the Appellees have made no showing of any prejudice which they would sustain by reason of such expedited disposition.

5. Appellant respectfully submits that requirements of fairness, as well as the substantial and irreparable harm which will result from renewed picketing, dictate that this Court should expedite its ordinary procedures to take into account the extraordinary nature of this case. The present procedural posture of this case may cloud the clear and substantial legal question posed by the District Court's injunctive order so that review of that question by the United States Supreme Court may be denied because of circumstances that do not go to the substantive issue in this appeal.

Respectfully submitted,

[Signatures of Attorneys for Appellants omitted]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 28064

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Appellant,
— versus

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVI-
SION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
et al.,
Appellees.

Stipulation to the Court to Enter Judgment

Counsel for the parties in this matter hereby stipulate that the Court may enter a judgment on the merits of the appeal from the District Court's Order dated June 19, 1963, without further briefing or oral argument, affirming such Order of the District Court, such stipulation by appellant to be without prejudice to appellant's rights to further judicial review.

DAVID FOSTER
Attorney for Appellant

ALLAN MILLEDGE
Attorney for Appellees

Dated: July 16, 1969

UNITED STATES COURT OF APPEALS**FOR THE FIFTH CIRCUIT****No. 28064****D. C. Docket No. Civ 67-335-J.**

ATLANTIC COAST LINE RAILROAD COMPANY,***Appellant,*****versus****BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVI-
SION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS;
*et al.,******Appellees.***

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

Before BELL, AINSWORTH and GODBOLD, Circuit Judges.**Judgment****(Filed July 17, 1969)**

The parties in the captioned cause have filed a stipulation for entry of judgment as follows:

"The Court may enter a judgment on the merits of the appeal from the District Court's order dated June 19, 1969, without further briefing or oral argument affirming such order of the District Court, such stipulation

by appellant to be without prejudice to appellant's rights to further judicial review. David Foster attorney for appellant Allan Milledge attorney for appellees"

Pursuant to the foregoing stipulation it is accordingly hereby ordered and adjudged, by this Court, without further briefing or argument that the judgment of the District Court be hereby affirmed, without prejudice to appellant's rights to further judicial review. Brotherhood of Railroad Trainmen, et al., Petitioners v. Jacksonville Terminal Co., 89 S. Ct. 1109 (1969).